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### Online Film in China

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CREATE Working Paper 2019-03 (March 2019)

# Online Film in China

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## **Convergence or differentiation in IP protection? A case study of new models for digital film, music and e-fiction production and distribution in China**

### *An Introductory Note*

These CREATE working papers comprise three reports, Online Music in China, Online Literature in China and Online Film in China. They are part of the deliverables from the most exciting research project I have conducted in the last nearly thirty years, “Convergence or differentiation in IP protection? A case study of new models for digital film, music and e-fiction production and distribution in China”.<sup>1</sup>

I was very fortunate to have a strong team of passionate colleagues in China and in the UK to work with me. There were two AHRC research grants - (1) the AHRC China Digital Copyright Centre and Newton Fund (RGS 116357) and (2) the RCUK Research Centre for Copyright and New Business Models in the Creative Economy (CREATE) (AH/K000179/1) that enabled us to conduct the field investigation in China during the period from December 2015 to April 2017.

To describe the research as “the most exciting project” is not, to whichever extent, an overstatement. While testing the interests of local players to the research topic for preparing the research proposal, we had already had some understandings for interview with potential respondents from Internet intermediaries and IP professionals in China. Our original plan proposed in the research application was to have around 35 semi-structured interviews with Internet business platforms, IP practitioners, government officials and academics, which finally ended with the number up to 59. If including informal conversations with friends, relatives and taxi drivers, and also with the interviewed respondents on other occasions such

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<sup>1</sup> For details of the research method adopted for this project, please see our paper Shen, Xiaobai, Williams, R., Zheng, Z., Liu, Y., Gerst, M. (2019) ‘Digital online music in China – A “laboratory” for business experiment’, published in *Technological Forecasting and Social Change*, Volume 139, February 2019, Pages 235-249. A pre-print is available in this CREATE working paper series.

as at a casual dinner table, WeChat<sup>2</sup> conversation platform, etc. the number would be lot higher.

During the process of the project, to share our interview results, we created a shared folder in Jianguoyun.com, which offers similar functions as those of Dropbox.<sup>3</sup> Team members were able to view each other's interview notes and listen to voice recordings. Regular research meetings were held during my (PI) field trips in China. Otherwise, using WeChat's group conference feature, we met online discussing various issues. What did inspire and impel us the most during our investigation were the outpouring of fresh new materials, which amazed us with the constant changes taking place in China. According to the research plan, we should have stopped the field work at the end of September 2016. However, we could not and did not close the investigation until the end of the project. There are still materials un-transcribed, and they are not included in the reports.

The three reports are composed following the template, which, resulted from the team consensus, consists of main components as follows:

- 1) the background that helps understanding the Chinese contexts and the development of music, literature or film, since digital technology became available;
- 2) the cases that illustrate emerging online services provided by internet giants, especially the so-called BAT (Baidu, Alibaba, Tencent), inclusive of everything about the dynamics in the field, new or old models, from production to distribution/consumption;
- 3) the changes and the development of the IP protection regime, its role in contributing or constraining the evolution of the Chinese creative cultural sector;
- 4) the challenges and/or potential trends.

Our team members residing in China took on the tasks of compiling the reports. The part - Online Music in China was drafted by Yixiao Li and completed by Shufeng Zheng; Yixiao

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<sup>2</sup> WeChat is a Chinese multi-purpose messaging and social media app operated by Tencent.

<sup>3</sup> Dropbox is not available in China.

Li<sup>4</sup> was also the author of *Online Literature in China*; Martina Gerst<sup>5</sup> is the author of *Online Film in China*. Both Yixiao Li and Shufeng Zheng<sup>6</sup> were the post-graduate students of Professor Yinliang Liu, also our team member, in Peking University Law School. Martina Gerst graduated from the University of Edinburgh with a PhD having worked in China for many years being affiliated with Tsinghua University Business School. As each author came from their own educational, disciplinary and cultural backgrounds, readers may still detect somewhat different stances, perspectives and lenses deployed in the papers even after moderation during the circulation amongst the team members.

For those who are interested in the Chinese online business services offered for film, music and literature production and distribution, the most interesting readings provided by the reports are the details, manifests, phenomenon, and activities which were taking place in China at that time and the social space. Some of these activities are seemingly the copy of the others in the US and Europe, albeit, tracing the strings of the development during the process shows how they have been shaped and moulded particularly by the players within the social and material contexts in China. The details reflect vividly a different philosophy and the cultural and socialist tradition of China, which once guided and is perhaps still dominating the guiding principle of the state in developing the music, literature and film sectors.

Although in each report, the music, or literature, or film sector is referred to as an “industry”, they are not an “industry” with the production and distribution for commerce and profit-making businesses, in the sense of market economies in the developed world. Music, literature and films (because of modern technology) in China’s past were associated with entertainment for the general public, and/or later on, the arts since the introduction of Western systems of music, literature and film education.

Before the economic reforms, China did not have separate music, literature, and film industries. If we regard them as a system, then it was the system of culture, being created and supported by the state to serve the society. In socialist China, the whole purposes of the

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<sup>5</sup> Dr Martina Gerst, Senior Manager at BMW Financial Service in Beijing.

<sup>6</sup> Shufeng Zhen, a PhD student in Peking University Law School

system of culture including music, literature and film were nothing but to reflect peoples' lives while to create content that would uplift peoples' spirit for constructing socialist China through entertainment. It is unlike North America and Western Europe where the markets for music, literature and film have long been established forming the individual industries for business players to compete for domination and pursue economic gains. For example, there have been big labels dominating the music industry, and Hollywood (the nexus) in movies, which are entrenched in these industries even today operating solely for commercial purposes. One may wonder whether these are the features of cultural creativity, distinctive from other human activities of our societies.

One may find interesting to see the different dynamics in China in comparison with North America and Europe. Instead of the record companies and publishers like big labels, in the Chinese online creative cultural sector, the dominance is held by the internet intermediaries, such as BAT. With their integrated service platforms (for details, please see Shen et al. 2018)<sup>7</sup>, their economic pursuits have become highly diversified through a wide range of business channels. For example, the music services are merely one type of the services, like literature, film, e-commerce, e-payment, and other services, which are vertically and horizontally integrated enhancing each other operating through various cross-over values chains simultaneously on the cross-platform business infrastructures. The reports of Online Literature in China and Online Music in China would be an interesting read, which provides many detailed cases on points.

For those who are interested in the IP development in China, the report – Online Film in China provides a systematic overview of the changes in copyright protection in China. It describes an arduous process, from China's desire initially to placate international trading partners under pressure from the US administration and international organisations, to the recent complex stance having domestic industries' self-interests in mind in pursuing economic goals. Many readers may find more comfortable to identify themselves with the

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<sup>7</sup> See note 1.

position of Priest,<sup>8</sup> who expects the IP protection in China would follow suit that of in the US. With the process unfolding, Chinese key players would eventually see sense for strong protection of IP. From that lens, the paper shows how the Chinese government has made efforts to improve the IP protection legal services and enforcement mechanisms providing not only regulations but also detailed guidelines to ensure the interests of the right holders are protected in the entertainment industry. Despite this, the paper reminds us of the reality of the distinctive Chinese characteristics that are deeply rooted and cannot be ignored. In the Chinese tradition, the contents of cultural creativity are regarded as “a common cultural heritage” of the society. With socialist core ideology, the public interest takes high priority. One shall wait and see how the development in the online creative culture sector and the IP protection in China is to keep the balance between different interests.

Back to the question, “convergence or differentiation” that this research set out to seek the answer, hopefully, different readers will find the answers of their favourite. However, as discussed in Online Music in China, the problems encountered in online music to keep the balance between the interests of private and the public are not resolvable in the frame of the current IP protection regime. The relation between the developments of online business models in the creative culture sector and the IP protection in China is unequivocal, closely connected, which is illustrated vividly in these reports. The latter has always served as a barometer of the political and trade relations between China and the US, which is not the place to find the “convergence”.

We know, the IP protection regime based on the conception of “intellectual property” was derived in the West and was later introduced to China<sup>9</sup> especially in the recent past. In this distant new environment, it is, at best, a “tool” with the utilities defined by the West, however it is up for Chinese users to explore. In today’s globalisation and in the digital age, where

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<sup>8</sup> Priest E. (2008) Why Emerging Business Models and Not Copyright Law Are the Key to Monetising Content Online, in Fitzgerald, B. Et al (2008) Copyright Law, Digital Content and the Internet in Asia-Pacific. Sydney University Press: Sydney. For further references, see the report: Online Film in China.

<sup>9</sup> Alford, W. P. (1995) To Steal a Book Is an Elegant Offense. Stanford: Stanford University Press.

emerges a set of new norms for the connected society<sup>10</sup>, the current IP regime at home in the developed world is facing challenges. China is rendered different, with its tradition and past, from the West and has become an exciting place for studying, not only the development of the IP regime with its Chinese flavours, but also the rapidly changing creative cultural sector built on its distinctive digital cross-platform infrastructures.

After completing the project, we have also published a journal paper “Digital online music in China - a laboratory for business experiment”.<sup>11</sup> The paper focuses mainly on online music, most case materials of which can be found in the three reports. There are also additional data collected after the project through personal contacts in China that were established during the fieldwork. For convenience, the paper was written by the team members, Xiaobai Shen and Robin Williams, in the UK, which may inevitably reflect their viewpoints. These reports have not been published until now. For this, we have to thank the director of CREATE, Professor Martin Kretschmer, and his colleagues in the University of Glasgow for their encouragement. The reports were edited for the CREATE working paper series by Dr Inge Sørensen and Amy Thomas.

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<sup>10</sup> Castells, M. (1996) *The Rise of the Network Society. The Information Age: Economy, Society and Culture* Vol. I, 2nd ed. 2000. Oxford: Blackwell.

<sup>11</sup> See note 1.





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## Online Film in China

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## Introduction

The most recent major sale of a US film company was announced at the beginning of November 2016: “Wanda buys Dick Clark Productions”.<sup>1</sup> Who would have predicted this announcement ten years ago? The Chinese Dalian Wanda Group is about to buy Dick Clark Productions for about one billion USD; and with it the broadcasting rights to television programs that attract tens of millions of viewers every year: The Golden Globe Awards, the Academy of Country Music Awards and the New Year countdown celebrations in New York. The latter, with an estimated reach of more than a billion, has become an iconic image of New Year’s Eve festivities.

Together with further announcements by Wanda’s chairman to invest in all of the big movie studios<sup>2</sup>, this led to speculation whether the Chinese film industry might change or even replace Hollywood’s box office dominance<sup>3</sup> or reputation as a film making hub because of the overflowing capital provided by the Chinese behemoths Alibaba Group or Tencent Holdings.<sup>4</sup>

However, by Western standards, China’s film industry faces several challenges, particularly in frequently changing regulations, in the case of Wanda, leading to pull out of the acquisition of

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<sup>1</sup> Schwartzel E.; Ma, W. (2016), China’s Wanda Group to Buy Dick Clark Productions for About \$1 Billion [online] available at: <https://www.wsj.com/articles/chinas-wanda-group-to-buy-dick-clark-productions-for-about-1-billion-1478223352> [last accessed November 13th 2016.]

<sup>2</sup> Garrahan M., Clover Ch., (2017), China’s Hollywood romance turns sour, [online] available: <https://www.ft.com/content/d5d3d06e-de8b-11e7-a8a4-0a1e63a52f9c> [last accessed February 27th 2019].

<sup>3</sup> Child, B. (2015), Will China's growing box office dominance change Hollywood forever?, [online] available at: <https://www.theguardian.com/film/filmblog/2015/sep/10/will-china-box-office-dominance-change-hollywood> [last accessed February 28<sup>th</sup> 2019].

<sup>4</sup> Lin, L (2016) China’s Movie Industry is the New Hollywood, Some Top Filmmakers Say, [online] available at: <https://blogs.wsj.com/chinarealtime/2016/04/18/chinas-movie-industry-is-the-new-hollywood-some-top-filmmakers-say/> [last accessed February 28<sup>th</sup> 2019].

Dick Clark Productions due to changing investment policies<sup>5</sup> and China's reputation for copying and piracy.<sup>6</sup>

Over the years, because of piracy, China's film industry has only generated half of its potential revenue, begging the question about how the Chinese film industry can sustain only receiving a fraction of potential profit.<sup>7</sup> Other issues include the government quotas for foreign film imports, censorship, distribution in segmented markets, blackout dates (restrictions on foreign films showing in China's National holidays), Intellectual Property (IP) and the control of reproduction of digital copies of film and content. This last point is particularly challenging. With the proliferation of Internet platforms, copying and distributing digital content could be technologically with no limit.

Has China discovered the next-generation monetization model for online content? This is the question asked by Priest in his latest paper.<sup>8</sup> This is precisely one of the research questions that took our team to investigate in the China's online film industry. The rest of the chapter will address the development of the creative cultural industries in China and beyond, in particular the trends while internet giants like Baidu, Alibaba and Tencent have evolved in production, and distribution of film contents and the impacts on digital copyright protection in China and globally.

## Creative industries and film – recent historical background

### The creative industries

Over the past decade, there has been remarkable development in Chinese creative cultural industries (CCI). As reported in “The Statistics of Chinese Cultural Industry 2012” by China's National Bureau of Statistics on August 26, 2013, the production of CCI has grown by 60 times

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<sup>5</sup> See supra note 3.

<sup>6</sup> DTVE Reporter (2017) Piracy to cost TV and film industry US\$52bn by 2022 [online] available at : <https://www.digitaltveurope.com/2017/10/30/piracy-to-cost-tv-and-film-industry-us52bn-by-2022/> [last accessed February 27<sup>th</sup> 2019].

<sup>7</sup> Szymanski E. (2015) What's holding back China's movie industry? [online] available at: <http://www.managingip.com/Blog/3465765/Whats-holding-back-Chinas-movie-industry.html> [last accessed July 3rd 2016].

<sup>8</sup> Priest, E. (2016), Meet the Media, same as the old media: real lessons from China's digital copyright industries, 23 Geo. Mason L. Rev., pp. 1079-1092.

in just ten years, from 30 billion RMB in 2003 to 1,807 billion RMB in 2013. This sector accounted for 3.84 percent of GDP in 2014.<sup>9</sup> During the same period, ongoing integration and cooperation between various sectors such as culture, technology, finance and real estate was also observed.<sup>10</sup> The Chinese government has pledged to promote the growth of its cultural industries to a new level, regarding its special role in driving the economic restructuring and the transformation of its development model.<sup>11</sup> To achieve this goal, efforts have been made to modernize China's cultural industry, foster multiple forms of ownership of cultural establishments while retaining the predominance of public ownership, encourage innovation and stimulate consumption. The government has introduced a number of policies and measures to support the implementation of these guidelines. In the article "Chinese Cultural Industries: Targets, Gross Volume, Structure, Problems and Strategy" (2011), Xiang and Yu frame these guidelines as the Chinese Cultural Input-output Model, describing it as a formula for the industries to follow.<sup>12</sup>

The development and change of China's CCI has been already discussed by Chinese and Australian ministers at a forum in the context of China's accession to the WTO.<sup>13</sup> Questions have been raised concerning CCI and the relation to the so-called "Chinese characteristics" as well as IP, copyright law, regulation, education, regional and enterprise development were also to be discussed.<sup>14</sup> In addition, fundamental tensions within the CCIs on several levels have been pointed out: art house cinema versus mainstream cinema; 'public' culture versus 'private' profit; critical arts versus commercial exploitation.<sup>15</sup> Other important aspects that have been discussed are: the role of individual imagination as part of the development of the Chinese

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<sup>9</sup> Author Unknown (2014), Culture powered economy [online] available at: [http://www.chinaculture.org/focus/focus/2013caiwuspeeches/content\\_494512.html](http://www.chinaculture.org/focus/focus/2013caiwuspeeches/content_494512.html) [last accessed January 2016].

<sup>10</sup> China Publishing Media Journal revised & translated by German Book Information Center, Beijing, 2014.

<sup>11</sup> China Daily (2015) Culture powered economy [online] available at: [http://www.chinaculture.org/focus/focus/2013caiwuspeeches/content\\_494512.html](http://www.chinaculture.org/focus/focus/2013caiwuspeeches/content_494512.html) [last accessed January 2016].

<sup>12</sup> ICIPKU (2011) Chinese Cultural Industries: Targets, Gross Volume, Structure, Problems and Strategy (2011) [online] available at: <http://www.icipku.org/en/Research/Views/1252.html> [last accessed July 10th 2016].

<sup>13</sup> Keane, M. A. and Hartley, J. (2006), Creative industries and innovation in China. *International Journal of Cultural Studies* 9 (3), pp. 259-264, p3.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

economy and society, and whether China should be considered a ‘creative economy’ as far as content marketing and national branding goes.<sup>16</sup>

After years of rapid growth, CCI is gradually entering a stage of development of fine-tuning, according to the framework of the Communist Party of China (CPC) guideline that was passed on October 18<sup>th</sup>, 2011 at the Sixth plenary session of the 17th Central Committee of the CPC. Following the guideline, cultural industry will become a pillar industry for the national economy by 2020. The CPC also wants the sector to increase its overall power, international competitiveness, and enhance the moral values of civil society. The revival of China should be accompanied by a strengthening of Chinese culture, the amplification of China’s soft power through the socialist core value system.<sup>17</sup>

The strong demand for creative products has boosted the CCI, fostered interconnectivity with other industries and added dynamism to the national economic development. With the help of technological advancement, creative industries are modernizing and developing across media. One example is the emergence of cultural real estates and cultural industry parks (Wanda’s rival empire to Disney World). This development also shows domestic CCI’s are going global and their international competitiveness is improving.<sup>18</sup>

## **Copyright and the Creative Industries**

IP rights in general are a strategic tool for innovation and business development. Already in 2011, European-Chinese cooperation projects in IPR understood the creative economy of China as built upon the core of arts with its heritage but also user-generated content, cultural sectors such as film and video games, creative sectors such as brand building and related sectors (see figure 1). Thus, in order to build a sustainable creative economy, incentivising creativity,

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<sup>16</sup> Ibid.

<sup>17</sup> Xinhua/CCTV (date unknown) Party lays out 10-yr cultural roadmap [online] available at: <http://english.cntv.cn/20111027/111389.shtml> [last accessed July 10th, 2016].

<sup>18</sup> Fung A. (2016) Strategizing for Creative Industries in China: Contradictions and Tension in Nation Branding, *International Journal of Communication* 10, pp. 3004–3021.

maximising returns on investment, and facilitating IP licensing transactions, copyright is the essential instrument.<sup>19</sup>

## The Creative Economy 创意经济

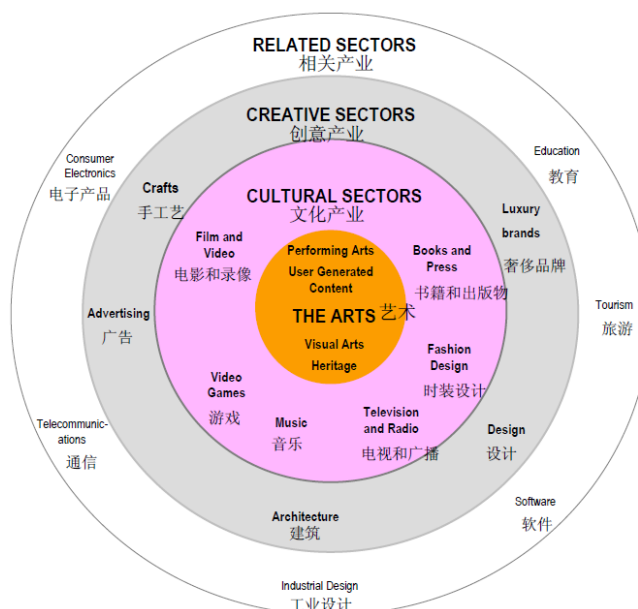


Figure 1: Presentation P. Kern, Copyright as essential tool to build a sustainable creative economy, 2011.

Copyright in a creative economy has an economic, social and cultural impact.<sup>20</sup> IP protection helps to protect the economic value produced by creative industries and improves the economic conditions of individuals, organizations and society. The social effects of IP are ensuring the availability of protected materials, its fair use, the ability to access knowledge and culture, and

<sup>19</sup> Kern, P. (2011) Copyright as an essential tool to build a sustainable creative economy, IPR 2 Workshop, Beijing March 2011 [online] available at: <http://www.ipkey.org/en/resources/ip-information-centre> [last accessed May 31st 2017].

<sup>20</sup> Gantchev D. (2011) The Role of Copyright for the Development of Creative Industries Seminar on Best Practices of Copyright Protection to Promote Industrial Development and on Copyright Enforcement in the Digital Environment,, China, Nantong, Jan. 13-14, 2011, [online] available at: [https://ipkey.eu/sites/default/files/legacy-ipkey-docs/23--doccentre-copyright-gantchev\\_role-of-copyright-en.pdf](https://ipkey.eu/sites/default/files/legacy-ipkey-docs/23--doccentre-copyright-gantchev_role-of-copyright-en.pdf), [last accessed May 31st 2017].

finally define the level of connectedness. Creative industries could also be seen as cultural production and heritage preservation. Creative industries make cultural resources and productions to the public available and allow for different levels of public participation in cultural activities.

China now has a comprehensive copyright law and a vast bureaucracy dedicated to its administration and enforcement. As reform processes gather pace and a new generation of media industry entrepreneurs emerges, copyright is taking on an increasingly prominent role in the growth of vibrant, commercially focussed Chinese creative and cultural industries.<sup>21</sup>

In China, one of the triggers is the growing awareness of copyright, as well as the rise of domestic pressure for a stronger copyright system. This is closely connected with wider processes of market driven reform across China's media system and the increasing development of innovation and IP products thereof. Another factor for a tighter system is most certainly a call by international stakeholders for stronger copyright protection in China.

In China, the transformation from a planned economy to a market-driven economic system has led to the emergence of Internet-made information, content, products and services as they are increasingly accessible and affordable to most Chinese consumers who enjoy higher disposable income. All of this facilitates China's creative industry, which is increasingly crucial to economic growth in a digital age.<sup>22</sup> Such issues form a recurrent theme in papers and books, particularly with regard to China's transformation to a market-driven economic system. This is evident in Montgomery's book on China's Creative Industries which explores the challenges and opportunities of CCI, especially regarding to the sector's online element and how value is created in areas like fashion, music, and film.<sup>23</sup>

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<sup>21</sup> Ren, X. & Montgomery, L. (2015), The Changing Role of Copyright in China's Emergent Media Economy [online], available at: <https://www.researchgate.net/publication/274066205> [last accessed February 4th 2019].

<sup>22</sup> Chen, L. (2010) Book Review: Lucy Montgomery, China's Creative Industries: Copyright, Social Network Markets and the Business of Culture in a Digital Age [online] available at: [https://www.academia.edu/3121529/Book\\_Review\\_Lucy\\_Montgomery\\_Chinas\\_Creative\\_Industries\\_Copyright\\_Social\\_Network\\_Markets\\_and\\_the\\_Business\\_of\\_Culture\\_in\\_a\\_Digital\\_Age](https://www.academia.edu/3121529/Book_Review_Lucy_Montgomery_Chinas_Creative_Industries_Copyright_Social_Network_Markets_and_the_Business_of_Culture_in_a_Digital_Age) [last accessed December 24th 2018], p.157.

<sup>23</sup> Montgomery, L. (2010) China's Creative Industries: Copyright, Social Network Markets and the Business of Culture in a Digital Age, Edward Elgar: Cheltenham, p 168.



## China's film industry

China's development of its film industry is characterised by tension and transformation. Before the opening up of China's economy in 1978, film was a propaganda tool of the Party rather than audience source of entertainment.<sup>24</sup> Chinese filmmakers were not concerned about film financing or production because their objectives were not commercial, and they had little influence on the film's content, often ideologically constrained.<sup>25</sup> However since the early 1990s China's film industry has become increasingly commercialized. Private investment has been encouraged to operate in a market-driven system, spurring development.<sup>26</sup>

Another turning point of China's film industry came after the country's ascension to the World Trade Organization (WTO) at the turn of the century, a move that saw the beginning of the privatization of a segment of a film industry long controlled by the state. That epochal event in 2001 was to upend the industry, as the increased entry of foreign films broadened choices for cinema-goers and put pressure on local players to raise their game. This was a jolt from an earlier, more limited round of disjunction and reorganization, prompted by China's move from a planned to market economy. The first shakeup happened in 1993, when the state-owned studios (then 16 in number) were forced to figure out how to market and sell their films without the guaranteed support of the government.

Entering the WTO in 2001 led to an increase of the quota of importation of foreign films to 20 per year.<sup>27</sup> Thus, according to Hua, 80 percent of China's box office revenue in 2003 came from 20 imported blockbusters.<sup>28</sup> The China film market depended on foreign films for revenue. Although the government-maintained control over content, the transformation of China's economy changed the role of its film makers. At that point of time, they were challenged by balancing censorship of content with market demands and were less concerned with the protection and enforcement of IP. In this context, film productions were more characterised by commercial aspects, although pirated DVDs and unauthorized copying and distribution of content was

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<sup>24</sup> Ibid. p 43.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Montgomery, L. (2004) Troubled waters for the development of China's film industry. In *Proceedings: Media Technology, Creative Industry and Cultural Significance*, citing Hua, J. (2004, 12-15 September). Strengthen the capital market and increase the drive of the culture industry. Paper presented at the 2nd Annual Cultural Industries Conference, Taiyuan, Shanxi Province.

widespread. In addition, with technology advancement, an increasing number of non-professionals became entrepreneurial by engaging in filmmaking and distribution.<sup>29</sup>

In 2004, film production in China was divided into four categories: (1) mainland films – being in the scope of government regulation, made in state-owned studios or Hong Kong, (2) foreign co-productions, (3) quota imports, or (4) underground films – outside of government regulation, often distributed without government approval but tolerated by the state. Montgomery claims that filmmakers often moved between different categories.<sup>30</sup>

In addition, films that were made by foreign studios in China for domestic and international audiences faced another level of scrutiny as the government had the power to decide if the film could participate in a foreign film festival. A mixed blessing came in the form of the “Closer Economic Partnership Arrangement” (CEPA) between Hong Kong and Mainland China, which allowed films to by-pass Beijing’s quota system if studios employed a certain number of Mainland Chinese staff.<sup>31</sup> Interestingly in 2004, out of 212 films produced, only 30 were made by state-owned studios while the others included domestic private capital and/or foreign investment.<sup>32</sup> Apart from the growing number of films produced in China, box office revenue also started to increase gradually.

However, at the same time well-established illegal distribution networks supported by affordable broadband connections and cheap home viewing equipment led to the distribution of unauthorized content, avoiding state regulations, the quota system or censorship requirements. Films ranged from Hollywood blockbusters, Korean romance films, Japanese animation, to the works by renowned Chinese directors working within the controlled system.<sup>33</sup>

Today these problems persist. Unauthorised distribution networks have expanded rapidly and content piracy is increasing with improved technology. Despite these developments, China has

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<sup>29</sup> Montgomery, L. (2010) *China’s Creative Industries: Copyright, Social Network Markets and the Business of Culture in a Digital Age*, Edward Elgar: Cheltenham, p 44.

<sup>30</sup> Ibid. p 45.

<sup>31</sup> Ibid. p 45.

<sup>32</sup> Hui, D. (2006), *Study on the Relationship between Hong Kong’s Cultural and Creative Industries and the Pearl River Delta*. Hong Kong: Centre for Cultural Policy Research, University of Hong Kong.

<sup>33</sup> Montgomery L. (2010), *China’s Creative Industries: Copyright, Social Network Markets and the Business of Culture in a Digital Age*, Edward Elgar: Cheltenham, p 47.

adopted an advanced IP law to meet international standards although<sup>34</sup> some experts claim that with transformative technological advancement and the spread of mass reproduction skills, copyright is almost impossible to protect in China causing problems for CCI.<sup>35</sup>

Nonetheless China's film industry marches on as stronger globalization has driven competition and expanded markets, leading to new consumption patterns as well as revenue strategies. The films of the Huayi Brothers are known for intensive product placement where 50 percent of the film revenue is coming from product placement of major international advertisers. Huayi Brothers have been able to combine the company's extensive advertising experience and contacts with carefully selected scripts to break new ground with this film financing model in China.<sup>36</sup>

China's Huayi Brothers are a good example of a Chinese success story in film making because of their box office success and development of new approaches.<sup>37</sup> They have adopted innovative ways to finance, market, and distribute films while using a variety of methods to rein in pirated content. This includes preventing the early distribution of their productions and sending auditors to the cinemas to supervise ticket sales in order to prevent under or over reporting. They even paid pirate distributors to prevent the sale of their films.<sup>38</sup>

### Issues the foreign film industry is facing

About 10 years ago, the major challenges for foreign films were<sup>39</sup> :

- The film quota

China's film importation system restricts foreign movie imports to 34 titles per year on a revenue-sharing basis, allowing Hollywood studios to take home up to 25 percent of the box-office

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<sup>34</sup> Brodbeck, V. (2013) Using the carrot, not the stick: streaming media and curbing digital piracy in China. Boston University Journal of Science and Technology Law, 19(1), pp. 127-56.

<sup>35</sup> Ibid.

<sup>36</sup> Montgomery, L. and Fitzgerald, B. F. (2006) Copyright and the Creative Industries in China. International Journal of Cultural Studies, 9(3), pp. 407-418, p. 408.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid. p 409.

<sup>39</sup> Miller, P.M. (2007), Reeling in China's Movie Fans, Special Report: Entertainment, China Business Review, 34(2), p. 35.

receipts.<sup>40</sup> However, the total number of foreign films imported on a revenue-sharing basis currently appears to be 38 – four more than is technically allowed. The film bureau denies a policy relaxation, as a portion of the films imported are categorised under “cultural exchange projects”, and hence exempt from the quota limit.<sup>41</sup>

Other imports are so-called “flat-fee releases”, usually reserved for independent and smaller titles. These are normally limited to between 20 and 30 each year. In a flat-fee arrangement, Chinese distributors pay a lump sum up front and all the box-office proceeds stay in China.

Co-productions have become an alternative for circumventing import quotas, as they collect a higher percentage of box office receipts (38 percent) compared to imports (25 percent). Many companies have engaged in co-productions since the success of the film *Crouching Tiger, Hidden Dragon*. This film, which won an Oscar in 2000, was co-produced by companies from Mainland China, Hong Kong, Taiwan, and the United States. In 2004, Warner Brothers Pictures, China Film Group, and Hengdian Group (HG) formed the first Sino-foreign joint venture (JV) film-entertainment company in Mainland China. The resulting JV Warner China Film HG Co. develops, finances, produces, markets, and distributes feature films, made-for-TV films, and animation. However, the attempt to allow foreign investment in film production was suspended very shortly after the People’s Republic of China Ministry of Culture, State Administration of Press, Publication, Radio, Film and Television (SAPPRFT) and several other government agencies jointly issued a circular, Opinions on Foreign Investment in Culture Related Areas, which prohibited foreign investors from establishing or investing in film production companies in China, in July 2005.<sup>42</sup>

China’s box office revenue-sharing deal is reportedly one of the worst in the world for film studios.<sup>43</sup> According to rules set by the SAPPRFT, foreign films earn about 13 percent of ticket

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<sup>40</sup> Fergus, R. (2016) China exceeds quota on Hollywood films amid box-office slowdown [online] available at: <http://chinafilm insider.com/china-abandons-quota-hollywood-films-amid-box-office-slowdown/> [last accessed May 31<sup>st</sup> 2017].

<sup>41</sup> Ibid.

<sup>42</sup> Charltons Law Firm (date unknown) China’s film industry, [online] available at: <https://www.charltonslaw.com/hong-kong-law/china-film-industry/> [last accessed May 31<sup>st</sup> 2017].

<sup>43</sup> China Film Insider, (date unknown) Ten Things to Know about Working in Film in China [online] available at: <https://americanfilmmarket.com/working-in-film-in-china/> [last accessed February 27<sup>th</sup> 2019].

sales in China. In contrast, film distributors in the US earn, on average, 50 percent of ticket sales.<sup>44</sup>

– Distribution and segmented markets

In 2007, distribution was still mainly done through DVDs and Video Compact Discs (VCD). Content on these formats were easily copied, a factor compounded with the large number of distribution vendors of DVDs in China. DVDs were distributed through tens of thousands of distribution points instead of a number of large chain stores like in the US. Moreover, China's market was – and still is - so segmented that films must be promoted separately in each city.

Films for home distribution in China must also face Chinese censors and make necessary edits before release. In contrast, pirates can release whatever material they want—uncensored—immediately after or sometimes even before a film's theatrical release, undermining the market for licensed products.<sup>45</sup>

– Few theatres, high ticket prices and blackout dates

At the beginning of 2007, China only had about 1300 theatres with about 3034 screens. Furthermore, at between 30 to 80 RMB ticket prices were expensive by local standards. During China's peak holiday season such as Chinese New Year, foreign films were mostly excluded from theatres or film festivals. The SAPPRFT was seen as giving Chinese films a better chance of making money during peak viewing periods.<sup>46</sup>

– Lack of regulatory transparency and consistency

Many foreign film studios could not predict when industry rules would change or whether local film officials would interpret rules the same way as officials at the SAPPRFT in Beijing did. Moreover, JV participation of foreign film studios were changing gradually and made some film studios pull out of their China business when the JV contract ended.

– Censorship and content guidelines

Although the government has issued content guidelines—for example, films cannot contain explicit sex or violence—the guidelines remain fairly open to interpretation. To avoid delays

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<sup>44</sup> Miller, P.M. (2007), Reeling in China's Movie Fans, Special Report: Entertainment, China Business Review, 34(2), p. 35.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

and additional production costs related to the censorship process, some studios self-censor their material. State censors edit films so that they are suitable for viewers of any age even though producers have urged China to implement a film rating system for years.

– IP infringements

According to the Motion Picture Association (MPA) piracy was – and still is - the “biggest threat to the US motion picture industry.” The report states that major US motion picture studios lost 6.1 billion USD in 2005 to piracy worldwide; 80 percent of those losses were from overseas piracy, and 20 percent were from piracy in the US. According to the report, China had the highest piracy rate of all surveyed countries: 90 percent of the potential Chinese market was lost to piracy in 2005.<sup>47</sup> China still views creative works as the State’s property and its people have difficulty respecting the rights of foreign works. Due to this, Chinese consumers might have a decreased moral barrier to piracy, and piracy is a cultural norm.<sup>48</sup>

These were the obstacles foreign film producers faced ten years ago. Since then many changes have taken place, benefitting foreign parties involved in film and online content. These developments are consistent with Beijing’s goal of transforming China into an “innovative country” and further push the advancement of the film industry in particular. This evolution will be explained in greater detail in the next chapters.

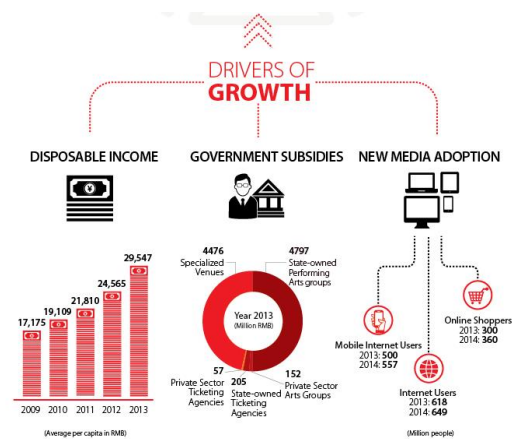
### Current developments of China’s film industry – the vibrant scene in 2015/16

The entertainment industry in China has seen explosive growth in recent years, expanding at a much faster pace than the overall economy. As illustrated in figure 2, the growth drivers are the disposable income of the middle class, from 760 USD per person in 2000 to 3440 USD by 2011, government subsidies and new media adoption.

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<sup>47</sup> Brodbeck, V. (2013) Using the carrot, not the stick: streaming media and curbing digital piracy in China. Boston University Journal of Science and Technology Law, 19(1), pp. 127-56.

<sup>48</sup> See Hill L.W. (2007) Digital piracy: Causes, consequences, and strategic responses, ASIA PAC. J. MANAGE. 9(12). See also Pang, L. (2012) Creativity and its discontents: China’s Creative Industries and Intellectual Property Rights. Duke University Press: Durham.



Note: For the purpose of consistency, all figures have been converted to USD at an exchange rate of US\$1 = RMB 6.24  
Graphic: Asia Briefing Ltd.

Figure 2: Market Overview: the Entertainment Industry in China, part 1 (Source: Dezan Shira & Associates, March 2016)

The 12<sup>th</sup> five-year Plan set the goal of making the cultural industry one of China’s “pillar” industries – often interpreted as a sector that grows at a double-digit rate and contributes at least 5 percent to China’s GDP.<sup>49</sup>

The Chinese government aims to use the cultural sector not only as a source of growth and jobs but also as a “soft power” tool, through which it can increase its own global influence. They are inspired by the success of Hollywood movies, Bollywood musicals and South Korean TV dramas to improve their home countries’ image abroad.<sup>50</sup> Thus, to navigate the lucrative but complex foreign environment, they might direct investments to selected areas. As shown in figure 3, in 2013, top revenue by far was achieved in gaming (13.8 billion USD), followed by theatrical movie performances (3.52 billion USD).

<sup>49</sup> Dezan Shira & Associates and Brandeis School of International Business (2015), Market Overview: the Entertainment Industry in China [online] available at <http://www.china-briefing.com/news/2015/03/06/market-over-view-entertainment-industry-china.html> [last accessed December 23rd 2018]

<sup>50</sup> Ibid.

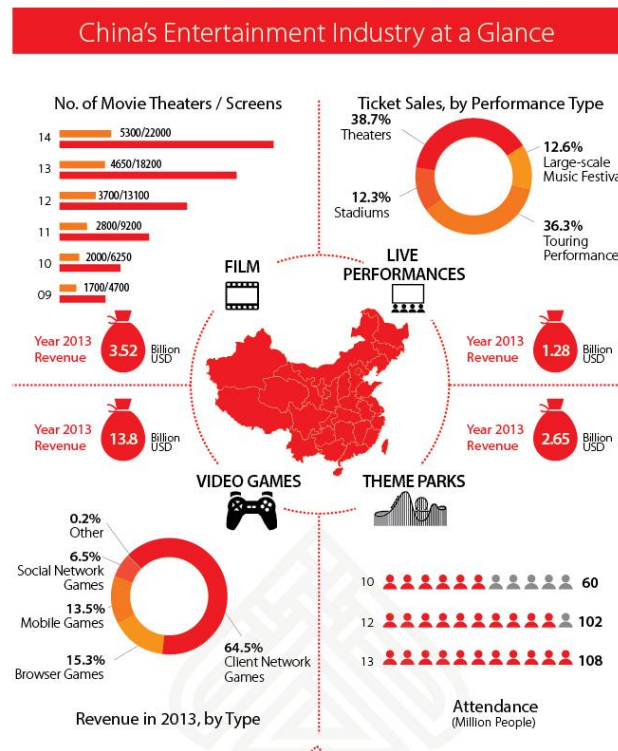


Figure 3: Market Overview: The Entertainment Industry in China, part 2 (Source: Dezan Shira & Associates, March 2016)

Today, the Internet and social media are influencing consumer viewing habits enormously; most Chinese consumers are watching content online on their smartphones. However, the emphasis on the political use of cultural and entertainment industries explains some of the sensitivity surrounding foreign participation and investment in China's domestic cultural scene. Perhaps this is why China maintains an annual quota on the number of foreign films that is allowed to be imported.<sup>51</sup>

### China's film value chain

Figure 4 below depicts the traditional film value chain model in China, including the different steps from the censorship of scripts to talent development, film making, distribution censorship and distribution. Other elements are imported films and substitutes that refer to a large amount of online audio-visual content, produced with or distributed through online technologies.<sup>52</sup>

<sup>51</sup> Ibid.

<sup>52</sup> McCall R. (2014) China's Film Industry: Strategic Opportunities [online] available at: <http://www.china-briefing.com/news/2014/02/11/chinas-film-industry-strategic-opportunities.html> [last accessed December 1st 2016].



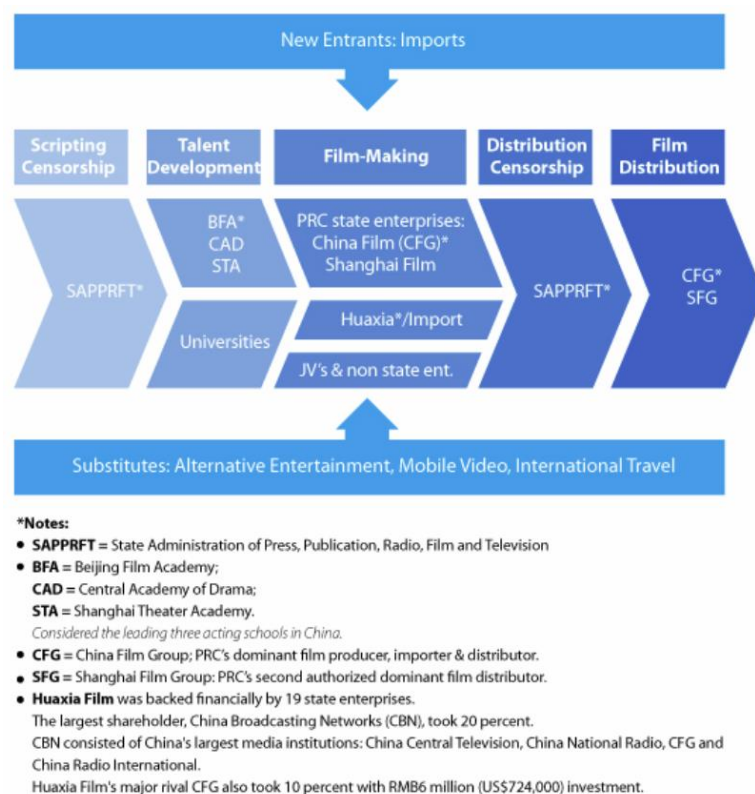


Figure 4: China's Film Industry: Strategic Opportunities (Source: China Briefing, 2014)

State, private, and foreign investors are competing and cooperating at the same time throughout the filmmaking value chain like never before (please refer to the different co-operations and stake holders in promising Internet platforms). Nonetheless, the State still maintains a commanding power in the industry. China Film Group and Huaxia Film Distribution share a monopoly on the lucrative import and distribution of international films. And most of the industry's private players, including the Bona Film Group, Huayi Bros. Media Corp., Stellar Megamedia Group, Beijing New Picture Film Co., Orange Sky Entertainment Group, Alibaba Pictures, Wanda Pictures, LeVision Pictures, and Enlight Pictures, understand it makes sense for them to be based as close as possible to the political decision-makers in Beijing.<sup>53</sup> Bona,

<sup>53</sup> Ryan F. (2016), Private Studios are Flourishing: Part 10 of the CFI Guide [online] available at [http://china-filmsinsider.com/private-studios-flourishing-part-10-cfi-guide/?utm\\_source=China+Film+Insider+Newsletter+Update&utm\\_campaign=106833886a-Daily\\_Newsletter\\_August\\_22\\_2016&utm\\_medium=email&utm\\_term=0\\_9a066b9dc2-106833886a-222351181](http://china-filmsinsider.com/private-studios-flourishing-part-10-cfi-guide/?utm_source=China+Film+Insider+Newsletter+Update&utm_campaign=106833886a-Daily_Newsletter_August_22_2016&utm_medium=email&utm_term=0_9a066b9dc2-106833886a-222351181) [last accessed November 11th 2016].

which has its roots in China's military, listed on the Nasdaq in 2010 and Huayi Brothers Media on the Shenzhen Stock Exchange in 2009. Bona recently privatised, bringing its business home to China's markets as the political winds have shifted in the country and Beijing has indicated its displeasure at Western influence in media.

The picture has become even more complicated with the arrival of China's big three tech companies — Baidu, Alibaba, and Tencent (collectively known as BAT) — in the content-making business. Just how disruptive their influence will be is still unknown; mega-media giants merge content production with a range of business lines that include ticketing, merchandise sales, gaming, social media, and online video streaming.<sup>54</sup>

### Film making

China's film market has experienced explosive growth in recent years and thus attracted huge investments from all kinds of investors.

This expansion is in contrast to Hollywood film studios, which have experienced tough times in the US and other markets over the last few years. With gradually declining box office sales, rising filmmaking and advertising costs, and rampant piracy, these studios are finding it increasingly difficult to earn profits. According to the MPA, only one in ten MPA members' films recovered its investment from theatrical releases in the US, and only four out of ten recovered their initial investment after all releases. To spread investment risk, parent companies of the major US film studios have expanded their businesses over the years to include other markets—such as network television, subscription cable, online video games, and even amusement parks. Hollywood has also reconsidered its overseas strategy and targets China increasingly.<sup>55</sup>

Making a film is an expensive and risky endeavour. During the five-year period from 2008 through 2012, approximately 90 films were released in the US with production budgets exceeding 100 million USD each. Most of these films failed to recoup their production costs via gross domestic box office revenues.<sup>56</sup>

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<sup>54</sup> Ibid.

<sup>55</sup> Miller, P.M. (2007), Reeling in China's Movie Fans, Special Report: Entertainment, China Business Review, 34(2), p. 35.

<sup>56</sup> Ghiassi, M. et al. (2015), Pre-production forecasting of movie revenues with dynamic artificial neural network. Expert Systems with Applications, 42, pp 3176–3193.

Main blocks for a first version of a film include costs for:

- **Development** – Getting to a final script
- **Pre-production** – Building a team and planning the shoot
- **Production** – Shooting the movie
- **Post-production** – Editing, visual effects, sound design and music.

These costs include most of the cast and crew's wages but probably not the full amount paid to key personnel, such as the director or lead actors. These people may get additional money based on how well the film performs (known as "Contingent Compensation") or a share of the money leftover once all the bills are paid (known as "Profit Participation"). Other costs include marketing, prints, residuals, financing and overhead costs.<sup>57</sup>

Experts estimate that the actual cost of each "100 million USD+" Hollywood blockbuster is an average of 417 million USD. So how do Hollywood blockbusters earn money?

Theatrical is the largest income driver for films, although not the most profitable. With 'Home Entertainment' the margin is higher than the theatrical window. Television generates an average income of \$86.9 million for a "100 million USD+ movie" and does so with little to no direct costs. Video on Demand (VOD) usually earns less than one percent of the total income of a blockbuster. Merchandising is generating an average of 11.5 million USD per movie, but this hides some big variations between titles. It seems that the biggest Hollywood blockbusters can get up to half of their budget back in merchandising alone. Airline and music income is very little but could be viewed as among the easiest deals with little to no costs associated.<sup>58</sup>

### Investment and financing

Good examples of the fast-changing filmmaking landscape can be found in the announcements of China-US investments in film production or company cooperation. These happen on an almost weekly basis. Even recent sluggishness at the box office hasn't curtailed deal-making on either side of the Pacific. Chinese film production and marketing company Huahua Media said

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<sup>57</sup> Follows, S. (2016) How movies make money: \$ 100 + Hollywood blockbusters [online] available at <https://stephenfollows.com/how-movies-make-money-hollywood-blockbusters/> [last accessed May 31<sup>st</sup> 2017].

<sup>58</sup> Ibid.

that it would invest in Paramount Pictures' World War II movie "Allied" starring Brad Pitt. That comes on the heels of Alibaba Pictures' agreement to co-produce and co-finance movies with Steven Spielberg's Amblin Partners.

Sony Pictures secured a commitment from Wanda in September to invest in a handful of its major projects, in hopes of giving its films a leg up in the country. While Wanda has been the most aggressive in the space, studios and production companies have also lined up to work with Chinese partners like Tencent, Alibaba, Hunan TV and Fosun International. Last year, Warner Bros. and China Media Capital set up a JV called Flagship Entertainment Group to make local-language movies. In turn, China film companies have turned to US studios to learn more about the art and craft of modern filmmaking. Hollywood exports such as Disney's "Zootopia" and Legendary Entertainment's "Warcraft" continue to generate a considerable portion of the overall theatrical revenue.

### **The Wanda Empire**

Over the past few years, Wang Jianlin's Wanda, which started in real estate development, has emerged as China's most aggressive investor in the US media sector. The company bought US theatre chain AMC Entertainment for 2.6 billion USD in 2012, and it has a pending deal to merge AMC with Carmike Cinemas, creating North American's largest cinema circuit. In January, the conglomerate paid a reported 3.5 billion USD to acquire Legendary Entertainment, the Burbank-based studio behind *Pacific Rim* and the upcoming *The Great Wall*, starring Matt Damon. Following a major partnership with Sony Pictures, Wang told the media that he planned to invest in all six of the big US studios.<sup>59</sup> Furthermore, Wanda also bought Dick Clark Productions, owner of the Golden Globes and other glitzy Hollywood awards shows.<sup>60</sup>

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<sup>59</sup> Brzeski P. (2016) Wanda Chairman reveals ambitious plan to invest billions in "all six" Hollywood studios [online] available at: <http://www.hollywoodreporter.com/features/wanda-chairman-wang-jianlin-plans-invest-billions-hollywood-942854> [last accessed October 31<sup>st</sup> 2016].

<sup>60</sup> Belloni M. (2016) It's official: Dick Clark Productions sells to China's Wanda group [online] available at: <http://www.hollywoodreporter.com/news/wanda-closes-1b-deal-purchase-940624> [last accessed October 31<sup>st</sup> 2016].

Wang has a very clear opinion on the US film market stating that “[o]ther things aside, in the film and entertainment industry, you have to understand that English-language films are relying on the Chinese market for growth.”<sup>61</sup>

In October, Wang established a film fund to lure productions to China.<sup>62</sup> Wang and the chief executive of international investments and business developments for the Wanda Cultural Industry Group Jack Gao — flanked by filmmakers, executives, the president of Academy of Motion Pictures Arts and Sciences (AMPAS) and the Mayor of Los Angeles — joined hands in what is a first-of-its-kind collaboration between the US and China who is “opening their arms” to Hollywood to come to China for film production. Wanda was specifically pitching its Qingdao Movie Metropolis complex.

To motivate Hollywood into venturing halfway across the globe, Wanda Group and the Qingdao municipal government have established China’s first internationally competitive film and television industry development fund worth 750 million USD which will incentivize “qualifying projects” with a rebate of 40 percent on everything from stage rental, set construction, equipment rental, accommodations, transportation, post production, etc. It will be available, they said, for “qualified productions” but they did not elaborate on that definition.<sup>63</sup>

A number of companies have already agreed to film there: Lionsgate with China Media Capital backed Infinity Pictures, Arad Productions, Arclight Films, Kylin Pictures, Base Media, Beijing Dirty Monkey Culture Industry Development and Juben Pictures. Separately, Digital Domain is exploring the opportunity to establish its first motion capture stage in Asia at Wanda Studios, providing services in digital imaging and digital imaging technician location grading for film production.<sup>64</sup> Within five years, Wanda Cinema Line very rapidly became China’s largest exhibitor. In 2017, Wanda operated 416 theaters with 3,654 screens<sup>65</sup>, after having invested

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<sup>61</sup> Ibid.

<sup>62</sup> Busch A. (2016) Wanda Group establishes film fund to lure productions to China: “opportunity for Hollywood, not competition” [online] available at: <http://deadline.com/2016/10/china-wanda-tax-credits-wang-jianlin-jack-gao-1201837822/> [last accessed October 31<sup>st</sup> 2016].

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Papish, J. (2017), Wanda’s M&A Activity Continues in China, [online] available at : <https://pro.boxoffice.com/wandas-ma-activity-continues-china/> [last accessed February 28<sup>nd</sup> 2019].

continuously in IMAX<sup>66</sup> and DOLBY Cinema sites.<sup>67</sup> Compared to the situation of a limited number of screens ten years ago, the SAPPRFT has announced that China with about 41000 screens by end of 2016 has the most cinema screens in world.<sup>68</sup>

### The other stakeholders of China's film market - BAT & friends

In China the Internet has boomed, with more than 700 million Internet users at present.<sup>69</sup> China's new Internet users are mobile native, with more than two-thirds preferring to surf online through their smartphones. According to data from the China Internet Network Center, in 2015, online trading in stocks and online payment were hot areas of growth, with user utilization rates expanding a whopping 54 percent and 37 percent respectively. The country now has more people online than any other and has seen not only the emergence of BAT but also home-grown tech companies like the smartphone maker Xiaomi.

This trend works well for companies like Tencent Holdings, Alibaba Group's online payment affiliate, Ant Financial, and Xiaomi-backed Tiger Brokers that have exposure to this segment of the market through online platforms that allow users to transfer money into financial products with ease. Online payment and e-commerce also matured quickly in 2015, with 60 percent of Internet users reportedly using the Internet to carry out those activities. Trading in stocks and funds have great potential for growth as the utilization rate amongst Chinese Internet users only stands at 9 percent. Other areas of growth are online banking, online travel bookings and online video that registered user growth of 19 percent, 17 percent and 16 percent respectively.

One area that showed a decline is the use of Internet forums or Bulletin Board Systems (BBS). Baidu's Tieba is an example of a BBS platform. Once extremely popular in China, BBS has been slowly overshadowed by the rise of mobile instant messaging and social networks like

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<sup>66</sup> Conan C. (2011), Imax signs with China's Wanda Cinema Line, [online] available at : <https://variety.com/2011/film/markets-festivals/imax-signs-with-china-s-wanda-cinema-line-1118034345/> [last accessed February 28<sup>nd</sup> 2019].

<sup>67</sup> Giardina C., (2017), Wanda Opens Asia's First Dolby Cinema Theater, [online] available at : <https://www.hollywoodreporter.com/behind-screen/wanda-opens-first-dolby-cinema-905453>, [last accessed February 28<sup>nd</sup> 2019].

<sup>68</sup> Ibid.

<sup>69</sup> See Lee, M. (2016), China's Nearly 700 Million Internet Users Are Hot For Online Finance [online] available at: [www.forbes.com/sites/melanieleest/2016/01/25/chinas-nearly-700-million-internet-users-are-hot-for-online-finance/#75bd](http://www.forbes.com/sites/melanieleest/2016/01/25/chinas-nearly-700-million-internet-users-are-hot-for-online-finance/#75bd), and Author Unknown (2018) Whitepaper: China Internet Overview [online] available at: <http://www.chinainternetwatch.com/whitepaper/china-internet-statistics/> [last accessed December 23<sup>rd</sup> 2018].

Tencent's WeChat and Sina Corp's Weibo. In 2015, the usage of BBS fell 8 percent to a 17 percent utilization rate. More interesting are the changes in Internet habits amongst China's Internet users.

The BAT are pursuing ambitious strategies and encouraging people to conduct more of their daily activities – from buying cinema tickets to watching movies or even writing blogs on interesting topics that could be converted into a film story – on their platforms. Thus, the BAT have moved from a content distributor to a content provider, producing audio-visual content themselves, as well as doing deals with partners across the content value chain.

Back in 2005, China's Internet landscape was dominated by a handful of companies such as Sina Corp. and NetEase Inc. But change was in the air. That same year, the search engine company Baidu Inc. launched an initial public offering on the Nasdaq stock exchange, the e-commerce company Alibaba Group Holding Ltd. partnered with the U.S. search engine Yahoo, and Tencent Holdings Ltd.'s messaging service QQ grew rapidly.

Now, the Internet in China is all about Baidu, Alibaba and Tencent – a pyramid of power often referred to as the “BAT”, who have a combined annual revenue estimated at 20 billion USD. And nothing tells the story of their build-up from strength to strength more than a string of mergers and acquisitions that closed in 2015, each orchestrated by one of the BATs. Four up-and-coming Internet business sectors in the country that were operated by smaller companies last year also came under BAT control in 2015.<sup>70</sup>

### **Baidu – the Chinese search engine**

Baidu is seen as the Chinese version of Google, a Chinese Language Internet Search Provider, headquartered in Beijing. It is the largest search engine and is, in terms of business interests, as diverse. Baidu's main ecosystem is mostly search, travel, lifestyle, entertainment, maps, etc., including companies such as Qunar.com<sup>71</sup>, or iQiyi<sup>72</sup>, etc. Baidu is the largest website in China

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<sup>70</sup> Author Unknown (date unknown) Caixin, Baidu, Alibaba and Tencent Swing a Big BAT in China's Internet Landscape (as of 18<sup>th</sup> Dec 2015) [online] available at: <http://english.caixin.com/2015-12-18/100890060.html> [last accessed October 31<sup>st</sup> 2016].

<sup>71</sup> Qunar (date unknown) [qunar.com](http://qunar.com) [online] available at: <https://www.qunar.com/> [last accessed February 27<sup>th</sup>, 2019].

<sup>72</sup> IQiyi (date unknown) IQiyi [online] available at: <https://www.iqiyi.com/> [last accessed February 27<sup>th</sup>, 2019].



and the fifth largest website globally.<sup>73</sup> Besides, in April 2016, Baidu spun off its Baidu Video portal as a separate business after successfully raising 155 million USD for the online video service.<sup>74</sup>

In 2013, for example, Baidu bought Internet video provider PPS. In 2014, it secured a 300 million USD investment from Xiaomi for its iQiyi video-streaming platform. Baidu is the majority owner of streaming video service iQIYI, that is losing money even with around 20 million paying subscribers<sup>75</sup>. Baidu's purchase of iQIYI came in the same week that Xiaomi bought a stake in Youku Tudou, another video-streaming platform part-owned by Alibaba.<sup>76</sup>

Baidu's film arm, Baidu Nuomi Pictures was bought by Baidu from the social networking site Renren for 160 million USD in cash in August 2013, and in June 2016 invested a stated 305 million USD in a slate of movies. In this context, the president of Baidu Nuomi Pictures reportedly said the company would use scientific and professional methods, as well as data from its massive web platforms, to assess projects. He said that the company is planning to produce 30 film and TV productions in 2016. Its preferred genres include thrillers, youth-oriented projects and animation.<sup>77</sup>

The company hopes to earn billions at the box office, promote the Chinese film industry with the fund, invest in quality film projects, talent development, and marketing and distribution. The company is understood to be a service provider or utility for China, the world's second

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<sup>73</sup> Baidu's 2013 Annual Report as sourced from Alexa.com as measured by average daily visitors, and Baidu's 2013 Annual Report

<sup>74</sup> Russell, J. (2016) Baidu's video business goes independent and raises \$155M from investors [online] available at: [https://techcrunch.com/2016/04/22/baidus-video-business-goes-independent-and-raises-155m-from-investors/?utm\\_source=Triggermail&utm\\_medium=email&utm\\_campaign=Post%20Blast%20%28bii-digital-media%29%20Twitter%2C%20Yelp%20form%20geo-location%20partnership%20%E2%80%94%20Chinese%20giant%20Baidu%20invests%20in%20film%20and%20TV%20%E2%80%94%20Me-dium%20builds%20media%20distribution%20platform&utm\\_term=BII%20List%20DMedia%20ALL](https://techcrunch.com/2016/04/22/baidus-video-business-goes-independent-and-raises-155m-from-investors/?utm_source=Triggermail&utm_medium=email&utm_campaign=Post%20Blast%20%28bii-digital-media%29%20Twitter%2C%20Yelp%20form%20geo-location%20partnership%20%E2%80%94%20Chinese%20giant%20Baidu%20invests%20in%20film%20and%20TV%20%E2%80%94%20Me-dium%20builds%20media%20distribution%20platform&utm_term=BII%20List%20DMedia%20ALL) [last accessed October 31<sup>st</sup> 2016].

<sup>75</sup> Frater P. (2016), China's Baidu to invest 300 million USD in movies via Nuomi fund [online] available at: <http://variety.com/2016/biz/asia/baidu-to-invest-in-movies-via-nuomi-fund-1201797861/> [last accessed October 30<sup>th</sup> 2016].

<sup>76</sup> Carsten P., Shih, G., Reuters (2014) Xiaomi to buy stake in Youku Tudou as part of online video push [online] available at: <https://www.reuters.com/article/us-youku-tudou-xiaomi/chinas-xiaomi-to-buy-stake-in-online-video-company-youku-tudou-idUSKCN0IW0KY20141112> [last accessed February 27<sup>th</sup> 2019].

<sup>77</sup> See supra 75.



largest film market, emphasizing its strengths in big data and as an online ticket provider. Analysing big data could be used to reduce risks when investing in films, a trend also adopted by competitors such as e-commerce giant Alibaba.<sup>78</sup>

In a demonstration of cutting-edge technology in film production, and post-production technology Baidu's subsidiary, iQiYi, announced the roll-out of its own virtual reality (VR) apps and a partner incentive program at its World Conference in Beijing. The company also announced plans for a VR fantasy movie *Iron Fists of the Despicable*. They publicised plans to use their expertise in online video and games as a springboard to build up an open and complete industry chain that covers VR production, distribution and interaction.

The iQIYI VR platform will provide marketing, production and operation assistance in VR content for its partners. Baidu expects that VR services jointly developed by iQIYI and its partners will reach more than 10 million users in China over the next 12 months (writing in 2016). China is understood to have the potential to grow into the world's biggest VR content supply and consumption market. Thus, Chinese companies are keen to move into the VR sector which they see as a way to broaden the range of entertainment content their clients will use, and a channel that extends the value of their IP. They see VR as a new and developing sector that allows them to keep up with innovations from the US.

### **Alibaba – E-commerce business**

Alibaba is the world's largest e-commerce operator that has diverse business interests in e-commerce, B2B, B2C, e-payment, entertainment etc. Two of its companies, taobao.com and Tmall.com, are among the main shopping websites in China while its cashless payment system Alipay is ubiquitous.

The film arm of Alibaba is Alibaba Pictures Group Ltd. It also owns the main English newspaper in Hong Kong the South China Morning Post. After previously investing in *Mission: Impossible - Rogue Nation*, Alibaba Pictures announced in April 2016 that it had agreed to invest in Paramount's *Teenage Mutant Ninja Turtles: Out of the Shadows*, and *Star Trek Beyond*. The company subsequently acquired a stake in Steven Spielberg's production company, Amblin

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<sup>78</sup> Ryan F. (2016) Search giant Baidu puts \$303M into Nuomi Pictures Film Fund [online] available at: <http://chinafilm insider.com/search-giant-baidu-puts-3b-nuomi-pictures-film-fund/> [last accessed October 30<sup>th</sup> 2016].

Partners. Other movies the studio has invested in include *Ferry Man* (摆渡人), *Three Lives Three Worlds Ten Miles of Peach Blossom* (三生三世十里桃花), and *Ao Jiao Yu Pian Jian* (傲娇与偏见). Their growth strategy extends beyond investments via suitable merger and acquisitions as they are seen to be one of many ways to drive business.

Alibaba Pictures also attempts to use big data about its users with film companies and cinemas to reduce their reliance on box office sales. In addition, they aim to support Small and Medium Enterprises (SME) to enter the film business, setting up financing platforms for them and providing data to enable targeted movie marketing in order to create new business models for the film industry.<sup>79</sup>

Their intentions are evident through a flurry of purchases from 2015.

In April 2016 Alibaba Pictures bought Guangdong Yueke Software Engineering Company for 134 million USD. Yueke supplies more than 1,000 theatres across China with electronic ticketing systems, as well as facilitating third-party electronic payments using systems such as Alipay.<sup>80</sup>

In July 2016 Alibaba Pictures announced its partnership with Wuhu Gopher Asset Management. Wuhu Gopher has previously invested in film projects with Bona Film Group. This partnership will see the establishment of a new 300 million USD film and TV fund, with a maximum contribution of 75 million USD by Alibaba Pictures.<sup>81</sup>

Alibaba Pictures also has announced plans to invest 1 billion yuan by buying convertible bonds in Dadi Cinema Construction that will give it a foothold in theatre circuits as well as a partnership in content and e-commerce.

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<sup>79</sup> SCMP (2016) Alibaba Pictures to combat China's movie industry challenges with big data strategies [online] available at: <http://www.scmp.com/business/companies/article/1974676/alibaba-pictures-combat-chinas-movie-industry-challenges-big-data> [last accessed October 30<sup>th</sup> 2016].

<sup>80</sup> SCMP (2016) Alibaba Pictures to buy Chinese cinema-ticketing company as firm expands entertainment arm [online] available at: <http://www.scmp.com/tech/e-commerce/article/1773346/alibaba-pictures-buy-chinese-cinema-ticketing-company-firm-expands> [last accessed October 30<sup>th</sup> 2016].

<sup>81</sup> Ryan F. (2016) Alibaba pictures launches 300 M investment fund [online] available at: <http://chinafilminsider.com/alibaba-pictures-launches-300m-investment-fund/> [last accessed October 30<sup>th</sup> 2016].

In 2015, Alibaba and Tencent snapped up more shares in Huayi Brothers, China's largest private-sector film company. Alibaba Group and Tencent offered aggressive subsidies to consumers by discounting film tickets by as much as 50 percent in order to win market share. That practice has been cut back significantly now that the ticket sellers are under increasing pressure to generate profit.

### **Tencent – social media**

Tencent is the company behind WeChat, China's most popular mobile based social app, and QQ, the messenger service. Headquartered in Shenzhen, Tencent's strength is in social networks, games, e-payment, etc., including WeChat and China's equivalent of Twitter Weibo. According to data compiled by Bloomberg, Tencent Holdings Ltd. has been involved in 20.8 billion USD of acquisitions and investments this year.<sup>82</sup>

Tencent Pictures (腾讯影业) is a Chinese film production company. It has created films based on books, comic books, animated series and video games.<sup>83</sup> They are looking for acquisitions that can accelerate plans to make its own blockbusters instead of buying them. Potential targets are in Hollywood and include companies on both the creative and production side of movie making. Tencent Pictures is best known for investing in this year's *Warcraft*, one of the most-popular movies in China, and the upcoming *Kong: Skull Island*. It recently announced a pipeline of 21 projects that include adapting Chinese-centric content for movie and TV screens around the world. These projects are worth around 295 million USD.

To help those efforts, Tencent Pictures is negotiating with David S. Goyer, a writer for the *Dark Knight* and *Man of Steel* franchises because the company's CEO Cheng sees franchises -- in the science-fiction, comic-book and adventure genres -- as a natural fit for Tencent Pictures and Chinese moviegoers. The parent company bought the rights to more than 300 Japanese anime properties and cultivated others at home to tap into the hundreds of millions of users who come

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<sup>82</sup> Chen L.Y. (2016) Tencent is on the lookout for Hollywood deals [online] available at: <https://www.bloomberg.com/news/articles/2016-12-11/tencent-goes-on-hunt-for-hollywood-deals-to-feed-china-film-boom> [last accessed October 30<sup>th</sup> 2016].

<sup>83</sup> Ma K., "Tencent forms film unit". Film Business Asia, 2015.

to its platform to read, watch and play games. Tencent wants to parlay those properties into a Marvel-like universe of cross-platform promotion.<sup>84</sup>

Another project is *The Tibet Code*, which ticks all of Tencent's content boxes and is a mystery in itself. What started as a 2008 adventure novel about an expert on the Tibetan mastiff dog blossomed into a ten-book series that's been called an amalgam of *The Da Vinci Code* and *Harry Potter* series'. The author uses the pen name "He Ma." His real name hasn't been publicized, and his prolific output prompted online speculation the series is produced by ghost writers. While Alibaba made the book into an online video series this year, Tencent Pictures acquired the rights to make a TV show and a mobile game, and it's exploring the opportunity of making a film. Since *The Tibet Code* is a mysterious treasure-hunting story like *Indiana Jones*, and it is seen to have the potential to become a production for a global audience.<sup>85</sup>

### Censorship and content

China's film industry has changed substantially over the past 20 years, becoming increasingly commercialised and driven by private investment. Yet according to Montgomery, the country's authoritarian government still regards films as "pedagogical and ideological tools to encourage and propagandise the political sphere, morality and patriotism"<sup>86</sup>, indispensable to maintaining social stability and ensuring growth.<sup>87</sup> That has been confirmed by a study of China's creative industry and its IP regime contending that China's policy is not driven simply by the desire to ensure that markets operate efficiently and comply with international standards.<sup>88</sup>

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<sup>84</sup> See supra note 65.

<sup>85</sup> Ibid.

<sup>86</sup> Montgomery, L. (2010) *China's Creative Industries: Copyright, Social Network Markets and the Business of Culture in a Digital Age*, Edward Elgar: Cheltenham, p 168.

<sup>87</sup> Friedman D. (2014), *Paradoxes, Google and China: How Censorship can Harm and Intellectual Property can Harness Innovation*. Information Technology and Law Series, (22), T.M.C. ASSER PRESS, The Hague, The Netherlands, 303 ff.

<sup>88</sup> Pang, L. (2012) *Creativity and its discontents: China's Creative Industries and Intellectual Property Rights*. Duke University Press: Durham.

Censorship practices in the cultural environment can be found in most of other countries as well<sup>89</sup> but as outlined in the previous chapter, China's censorship measures present obstacles to overseas investment, and have an impact on innovation.<sup>90</sup> International copyright owners are further deterred by the weak enforcement of copyright as China is widely perceived to keep a low level of copyright enforcement.<sup>91</sup>

On the other hand, the current economic situation of China, dubbed as the “New Normal”, and backed by the 13<sup>th</sup> five-year plan unfolds the governments' strategy to focus more on quality of products and services; this would also include film and related services. Furthermore, to sustain a continued economic growth, the current planned economy is putting a strong emphasis on domestic innovation and using IP rights to harness innovations' revenues in both the local and international market.

In China, the impact of censorship in the film industry has very practical consequences as shown in a very recent example of the European Union Online Film Festival (欧盟在线电影展), taking place in a number of Chinese cities in October/November 2016.<sup>92</sup>

Movies from 28 EU Member States were not only shown on IQIYI.com and DDDream Distribution but also screened at two cinemas in Beijing's city centre - Broadway (百老汇, 百丽宫) and Stellar (星美) Cinemas. Amongst the films “magnanimously” allowed by SAPPRFT, were *Ida* (修女艾达), *A Most Wanted Man* (最高通缉犯), and *Tangerines* (金橘). Organisers had intended to bring more European movies to an even wider audience, gauging audience preferences through movie screenings on online platforms.

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<sup>89</sup> For example, Censorship in America (2011) Leaked Proposals reveal UK Web censorship plans [online] available at: <https://censorshipinamerica.wordpress.com/tag/creative-industries/> [last accessed May 30<sup>th</sup> 2017].

<sup>90</sup> See supra note 70.

<sup>91</sup> Montgomery L. and Potts J. (2008) Global reuse and adaptation in the creative industries – Three further arguments against intellectual property based on lessons from China. DIME Working Papers on Intellectual Property Rights, no.59.

<sup>92</sup> European Film Festival Beijing, official website available at: <http://www.euoff.org> [last accessed March 2016].

However, only trailers for films like *Dheepan* (流浪的迪潘), *Youth* (年轻气盛), or *Hungry Hearts* (饥饿之心) were available on iQiyi.com. This is allegedly because the SAPPRFT did not finish making changes to the National Internet censorship policies before the festival started.<sup>93</sup> What remains unclear is whether these films could not be screened in cinemas because of censorship reasons.

This is only one example, albeit one frequently mentioned in research interviews, about copyright and the creative and film industry.

In the past, foreigners have viewed State censorship and IP rights from another perspective, both as legal concerns and barriers to creativity. This is because the Chinese government controls the content and the influence provided by foreign companies with censorship mechanisms and protectionist policies in industries such as film and video. Although it is understood that there has to be a balance of interests between demand and control in a fast-developing, immature market, government hold on foreign content and companies could stop foreign companies from coming to China due to concerns the tight reins may constrain freedom of expression and creativity.

However, in recent years, foreign policy makers recognise a trend towards increasing self-censorship by companies and see less discrimination of foreign films because of official objections. Concerns over foreign content have seemingly moved from censorship to a more restricted market access.

Nonetheless debate about censorship still exists – be it about official control, or its lack thereof, or the level of censorship exerted over independent and commercial productions.

In a roundtable discussion on copyright and film in China the author attended, foreign companies argued that censors did not seem not to be pro-active in enforcing foreign copyright on television set-top boxes popular among locals. They further argued that the authority's inaction was a clear disregard for copyright, allowing content pirates to free ride to the detriment of content owners.

The discussion also was revolving whether certain TV shows from UK bought by Tencent, including *Skins* had gone through censorship. It was assumed that content is very much subject to interpretation and that in China local production and distribution companies now tend to

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<sup>93</sup> Ibid.

“localise” the original content to circumvent censorship. The localisation and adaption aspect of foreign content has been mentioned several times by a number of interviewees; for example, by a German-US film rights company. They mentioned that the sitcom *Mad About You*, by Sony, will be reproduced by Sony and its JV production in China to be screened on TV. Another example is a German show called *Knallerfrauen* where the remake is called *Diaosi na*. In this way, the remakes are often a way around import restrictions and to circumvent censorship because the remake is seen to be local.

Followed-up in interviews, foreign interviewees involved in film production think that China’s censorship system may not change. However, the younger Chinese generation is perceived to be very innovative and since they are used to the system, there are assumed to find creative ways around censorship. In addition, the Internet and social media still do not seem as controlled as TV, and content that is popular while getting many clicks shows a lot of face and might get around censorship.

At a panel discussion about Chinese film making, local organisers of independent film screenings, also representing the European film association, pointed out that independent films are facing other challenges than commercial ones. This includes political censorship, financing and other aspects of filmmaking.<sup>94</sup>

A Chinese documentary director added that none of his documentaries have ever passed the local censorship body. This director went on to claim that in the past ten years 1400 locally produced documentaries have either been forbidden or suspended by the SAPPRFT. He was assuming that this is perhaps partially because documentaries may deal with uncomfortable issues, would not necessarily guarantee a happy ending and could be perceived as critical to the government.

The New Film Law or Film Industry Promotion Law<sup>95</sup> (NFL) doesn’t offer any clarity on this front and raises a number of questions.

Introduced and discussed in the next chapter, the NFL seems to present a more relaxed attitude towards censorship as it reduces the number of steps needed for Chinese studios to move a

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<sup>94</sup> Beijing, Bookworm, Panel discussion „Chinese Filmmaking: from the Indies to Hollywood“, March 27th, 2016.

<sup>95</sup> PKU Law (2016) Film Industry Promotion law of the People's Republic of China [online] available at: [http://www.pkulaw.cn/fulltext\\_form.aspx?Db=chl&Gid=283839](http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=283839) [last accessed May 31<sup>st</sup> 2017].

project from development to production. The power of censorship has also been transferred from the central government to provincial level governments, enabling filmmakers to choose the region with the most favourable production environment. According to the new law, only an outline of the plot is required. However, filmmakers are concerned that independent film productions could suffer even more in the long run.<sup>96</sup>

In the context of the NFL, the main focus of discussion among insiders has been the simplified approval process for new productions. Only an outline of the plot is required and according to the new regulations, filmmakers are able to choose the region with the most favourable production environment. Experts like film curators or documentary film producers have voiced their doubts about the simplified procedures. Although relaxing censorship at an early stage of production may be a positive change, the new law will put more pressure on the industry in the long run.

The so-called “dragon stamp” meant a film’s content was approved by the censors before production began, serving as a reassurance to investors that the film would make it to the box office. The new law means the pressure is on the filmmaker to secure funding. Investors will be forced to carefully consider whether they should take a risk in the investment without a stamp of approval.

Another part of the new legislation also presents obstacles for independent filmmakers. For example, one article reaffirms an existing rule stipulating that those who participate in foreign or international film festivals without permission could be severely punished, including being banned from film-related activities for five years.<sup>97</sup> In the past, many Chinese independent filmmakers who faced domestic restrictions on their work have turned to film festivals abroad. However, even as the Chinese film market has boomed over the last 20 years, films by internationally acclaimed independent directors like Jia Zhangke and Lou Ye are still outlawed in China.<sup>98</sup>

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<sup>96</sup> Cai, Y. (2016) Featured Stories, News [online] available at: [http://chinafilminsider.com/less-censorship-make-independent-film-productions-suffer/?utm\\_source=China+Film+Insider+Newsletter+Update&utm\\_campaign=695229b7fe-Daily\\_Newsletter\\_August\\_228\\_22\\_2016&utm\\_medium=email&utm\\_term=0\\_9a066b9dc2-695229b7fe-222351181](http://chinafilminsider.com/less-censorship-make-independent-film-productions-suffer/?utm_source=China+Film+Insider+Newsletter+Update&utm_campaign=695229b7fe-Daily_Newsletter_August_228_22_2016&utm_medium=email&utm_term=0_9a066b9dc2-695229b7fe-222351181), [last accessed January 3<sup>rd</sup> 2017].

<sup>97</sup> Ibid.

<sup>98</sup> Cai, Y. (2016) Less censorship could make independent film productions suffer [online] available at: <http://chinafilminsider.com/less-censorship-make-independent-film-productions->



The new law also seems to fail to clarify what type of content will be subjected to censorship. However, with a view on the new NFL, one might get an idea when the law states that no local film should contain content that: "jeopardizes national unity, sovereignty and territorial integrity; releases national secrets; endangers state security; damages national dignity, honour and interests; or advocates terrorism and extremism."<sup>99</sup> The government's emphasis is on artists to further the development of "contemporary Chinese values, embody traditional culture and reflect Chinese people's aesthetic tastes" and advocate "integrity, merit and compassion."<sup>100</sup>

Absent from the NFL is any mention of a classification system where movies containing violent or pornographic content are issued a rating and minimum age recommendation. It is something that has been advocated by Chinese filmmakers for a very long time.

Documentary film producers such as Lesly Qin believe that the current system is unlikely to change under the new regulations, and that the status quo increasingly benefits successful commercial film studios while putting young, independent filmmakers at a disadvantage. She commented that "It's difficult for filmmakers when they are facing pressure from both ideology and capital".<sup>101</sup> She further points out that politics should not interfere with film creation, but this goal seems to have been forgotten along with the introduction of a film classification system. It seems the political censorship has become a default setting and with that a culture of self-censorship.<sup>102</sup>

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[suffer/?utm\\_source=China+Film+Insider+Newsletter+Update&utm\\_campaign=695229b7fe-Daily\\_Newsletter\\_August\\_228\\_22\\_2016&utm\\_medium=email&utm\\_term=0\\_9a066b9dc2-695229b7fe-222351181](http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=283839) [last accessed May 29<sup>th</sup> 2017].

<sup>99</sup> PKU Law (2016) Film Industry Promotion law of the People's Republic of China [online] available at: [http://www.pkulaw.cn/fulltext\\_form.aspx?Db=chl&Gid=283839](http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=283839) [last accessed May 31<sup>st</sup> 2017]. Comments by for example, Evans, A (2016) China passes law to ensure films' serve the people and socialism' [online] available at: <https://www.theguardian.com/film/2016/nov/08/china-passes-film-industry-law-box-office-fraud> [last accessed May 30<sup>th</sup> 2017].

<sup>100</sup> Thiruchelvam, S. (2014) The future of Chinese arts and creative industries [online] available at: <https://www.forbes.com/sites/sthiruchelvam/2014/11/24/the-future-of-chinese-arts-and-creative-industries/#6679cb9f3980> [last accessed May 30<sup>th</sup> 2017].

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

## Industry policies and most recent changes

In 2010 the State Council of China issued a series of guidelines for film and cultural industries to support the development of China's film industry on a macro policy level.<sup>103</sup> China's film industry is framed by a set of policies including international and national policies but also emphasising content and censorship. Whereas on an international level, there is the agreement on the Memorandum of Understanding-related WTO agreement, on a national level a circular of the State Council is existing, subsidising the creation and production of domestic high-tech format films.

However, since live streaming and VOD have gained extremely popularity, the control over the live-streaming industry has tightened recently.<sup>104</sup> In addition, China's NFL, or *Film Industry Promotion Law*, of November 7<sup>th</sup> has passed the Standing Committee of the National People's Congress.

Since both of these recent changes have stirred up a lot of discussion in the film market and on social media, both the NFL and the licenses for live-streaming will be introduced and discussed in the following paragraphs.

### The NFL

On November 7, 2016, China's highest legislative body, the Standing Committee of the National People's Congress, passed the NFL, or Film Industry Promotion Law.<sup>105</sup> The NFL took effect on March 1, 2017.

The film legislation process was initiated in 1984, following preparation of the first draft of the NFL. The legislation process recommenced in 2003 after formal implementation of *the Regulations on the Administration of Movies* on 1 February 2002. Since then, the box-office revenue

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<sup>103</sup> Entgroup (2015) China Film Industry Report 2014-2015 (in brief) [online] available at: [www.entgroup.com.cn](http://www.entgroup.com.cn) [last accessed May 30th, 2017].

<sup>104</sup> Merics (2016) China tightens control over live-streaming industry, Merics newsletter [online] available at: <https://www.merics.org/en/merics-analysis/newsletterchina-update/merics-china-update-no-52016/> [last accessed May 30th 2017].

<sup>105</sup> PKU Law (2016) Film Industry Promotion law of the People's Republic of China [online] available at: [http://www.pkulaw.cn/fulltext\\_form.aspx?Db=chl&Gid=283839](http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=283839) [last accessed May 31<sup>st</sup> 2017].

from China's films has jumped up to more than 5 billion RMB per month from less than 1 billion RMB per year.<sup>106</sup> As China's film industry continues to boom, shining a bright spot in a largely troubled economy, the imperative for transparent governance will only grow. The promulgation of this law should provide legislation for China's film industry that will greatly affect the development and management of the film market.

The rapid pace of the industry's development has increased the need for comprehensive legislation to provide a framework for regulating the movie business and, in practice, some previous drafts of the law have already seen their provisions take effect in an informal manner.

Since this legislation has been in the works for more than a decade, with a series of draft versions issued for public comment over the years, the last one in November 2015<sup>107</sup>, emphasized certain areas. The NFL was aiming to achieve the listed objectives below:

1. To liberalize market access

- to loosen access restrictions on enterprises engaging in film production, investment and distribution. Only after a company attempting to shoot a film has obtained the requisite license for film production and operation, the enterprise can apply to the Industrial and Commercial Bureau for the incorporation of a film company.
- No restrictions on capital investment in film production and related businesses.
- Companies having a license for producing films only need to file a screenplay or a script outline before it produces a film.
- Private companies could share equal footing with state-run businesses.

2. To allow controlled market access for foreign investment

- The *Catalogue for the Guidance of Foreign Investment Industries* (revised in 2015)<sup>108</sup> prohibits foreign enterprises from investing in film production companies, film

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<sup>106</sup> DaHui Lawyers (2015) The first film law in China is coming [online] available at: <http://www.dahui-lawyers.com/publications/The-First-Film-Law-in-China-is-Coming/> [last accessed November 9<sup>th</sup> 2016].

<sup>107</sup> Landreth, J. (2016) A new film law is coming: part 5 of the first CFI guide [online] available at: <http://china-filmsinsider.com/new-film-law-coming-part-5-first-cfi-guide/> [last accessed May 5<sup>th</sup> 2016]

<sup>108</sup> Baker McKenzie (2017) Draft 2016 Foreign Investment Catalogue – China continues opening sectors to foreign investors [online] available at: <http://www.bakermckenzie.com/en/insight/publications/2017/01/draft-2016-foreign-investment-catalogue/> [last accessed May 30<sup>th</sup> 2017].

distribution companies and cinema companies. In addition, it provides that foreign enterprises may only conduct film production business by cooperating with Chinese domestic companies.

- In addition, the NFL drafts provided that foreign enterprises cannot independently engage in film shooting business in China; however, it would allow foreign enterprises, fulfilling the following two conditions, to produce films in China in cooperation with Chinese domestic companies: (1) the domestic enterprise has lawfully shot films which were released to the public; and (2) the local or foreign enterprises have not violated any laws or administrative rules in the past two years.

### 3. To promote supportive and preferential policies

- The Draft for Comments proposed to adopt public finance, taxation, land use and other supportive measures to encourage enterprises, individual businesses and individuals to engage in filming activities. In fact, since the publication of the Draft for Comments, the Chinese Government has already implemented a series of measures, including:
  - A. Tax preferences: according to the Ministry of Finance regulations, the income of film production enterprises from selling film copies (including digital copies), transferring copyright, the income of film distribution enterprises from film distribution, and the income of film projection enterprises from film projections are exempt from value-added taxation during the period from 1 January 2014 to 31 December 2018.
  - B. Capital support: the national and local governments will gradually increase investment in the film industry through special capital and funding in the cultural industry. The Ministry of Finance and the SAPPRFT recently issued *Administrative Measures for the Collection and Use of National Special Funds for Development of Film Undertakings*<sup>109</sup>, further standardising the management of the collection and use of special funds of the national film industry in support of this industry.

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<sup>109</sup> The Chinese Film Market (2016) A new policy will be promulgated in 2017: the highest award up to RMB 6 million [online] available at: <http://mag.chinesefilmmarket.com/en/article/a-new-policy-will-be-promulgated-in-2017-the-highest-award-up-to-rmb6-million/> [last accessed May 30th 2017].

C. Financial support: the Chinese Government not only encourages financial institutions, insurance agencies and guarantee agencies to support the film industry, it also allows other commercial organizations to assist the film industry.<sup>110</sup>

#### 4. To strengthen market regulation

- Requiring the disclosure of box-office income, and that cinemas affiliated with major cinema corporations must install computer ticketing systems in accordance with the national standards.
- Enforcement of measures will be executed by the China Film Distribution and Projection Association and China Film Producers' Association (e.g. issuing warnings, suspending film support indefinitely, *etc.*).
- SAPPRFT has also recently connected the ticketing systems of major theatres nationwide into a single network.<sup>111</sup>

However, the Draft for Comments has not mentioned the film classification system, and the film censorship system has not been further refined either. In practice, the lack of a rating system is a smokescreen behind which the censors can hide, cutting or banning films without accountability to a set of transparent standards. It is generally expected in the industry that the relevant authorities will provide detailed rules in the formal promulgation of the law.

### The Scope of the NFL

The NFL scope applies to the whole production and distribution cycle for domestically produced films intended for the big screen, whether released in China or to be exported. As before, big screen films that will also be shown on the Internet or TV will continue to also be subject to specific regulations surrounding Internet or TV broadcasting if they are to be shown via such media.

Interestingly, the NFL does not apply to made-for-Internet film. Here, only the relevant Internet specific regulations would apply, although in the last two, three years, the number of made-for-Internet films has exploded in China. However, quality and content is debatable in some cases

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<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

and it has been said that some of these films might otherwise be censored if they had been made for theatrical or big screen distribution.

However, films made-for-Internet have been carefully watched by industry experts and Chinese film companies because the relative lack of censorship over those films caused government representatives to lobby for made-for-Internet films to be regulated on the same, more stringent basis as theatrical or big screen films. Equal censorship oversight over made-for-Internet films was proposed in the third draft of the NFL but was not adopted in the final version.<sup>112</sup>

### **Market Access in general, for foreign companies, and personnel in co-productions**

Regarding the liberalisation of the market, the NFL has removed the initial qualification requirement for Chinese companies to get the film studio approval before engaging in film making. This measure is reported to encourage more local and foreign companies to be able to enter the film businesses and to do this faster. Foreign companies may get easier access to a wider range of Chinese partners for Sino-Foreign co-productions, particularly for those wishing to follow corporate and financing structure models commonly used in Hollywood.<sup>113</sup>

In this context, the treatment of Sino-foreign co-produced films in China is an interesting aspect to look at because the law provides that Sino-foreign co-produced films shall be regarded as though they were domestically produced if certain ratios, for instance investment or profit distribution, are met. The NFL specifically indicates here that Sino-Foreign Co-Productions will be treated equally with domestic productions in all regards, including the censorship approval processes. Those requirements for Sino-Foreign co-productions already existed before. However, it remains unclear whether the equal treatment has an impact on the ratio of creative input, investment, or profit distribution compared to the current state of art.<sup>114</sup>

Both cinema operators and foreign filmmakers are pleased to see the law does not reduce the amount of foreign content that can appear in China's movie theatres, as was feared as recently as September 2016. That number is currently set at 34, but more than that number of films being distributed on a revenue-sharing basis have already been approved for release by the end of the

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<sup>112</sup> See supra note 92.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

year 2016.<sup>115</sup> The law does not include any changes relating to revising the cap on foreign movie imports. The NFL addresses that foreign film production companies must still partner with Chinese companies in order to work in China. However, it is also addressed in the following regulations (amongst others):

- *Catalogue of Industries for Guiding Foreign Investment (2015)* limiting foreign participation in movie production to Sino-foreign cooperative JVs only (often referred to as “Co-Productions”)<sup>116</sup>
- The *Administrative Provisions for Sino-Foreign Co-production of Films*, which sets the parameters for Sino-foreign Co-Productions, and the *Film Administrative Regulations*, addressing the import of foreign films for theatres or the big screen<sup>117</sup>
- The *Administrative Regulations on Radio and Television*, addressing the import of foreign films for TV.<sup>118</sup>

The NFL seems to be raising the bar on which foreign companies and personnel have the right to cooperate with Chinese companies and produce films in China. Specifically, the NFL states that foreign companies may not engage in local film production if they have ever "engaged in activities that damage China's national dignity, honour or interests; threaten social stability; or hurt the nation's people's feelings." This broad phrase generally refers to negative portrayals of China, depictions of historical events at odds with official People's Republic of China accounts of history, and material relating to Taiwan or Tibetan independence.<sup>119</sup>

The consequence of that could be Hollywood studios avoiding such subjects not only in films with a Chinese focus, but in movies throughout their slate. This appears to be the case with the newly-released *Doctor Strange*, which stars big-in-China Benedict Cumberbatch. In the film

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<sup>115</sup> Ryan F. (2016) Draft film law favors local films over Hollywood imports. [online] available at: <http://china-filmsinsider.com/draft-film-law-favors-local-films-hollywood-imports/> [last accessed December 10<sup>th</sup> 2016].

<sup>116</sup> Author Unknown (2015) Catalogue of Industries for Guiding Foreign Investment (2015), <http://www.mofcom.gov.cn/article/b/g/201510/20151001143026.shtml> [last accessed May 31<sup>st</sup> 2017].

<sup>117</sup> SARFT (date unknown) Administrative Provisions for Sino-Foreign Co-Production of Films, in Chinese [online] available at: <http://www.sarft.gov.cn/> [last accessed May 31<sup>st</sup>, 2017].

<sup>118</sup> SARFT (date unknown) Administrative Regulations on Radio and Television, in Chinese [online] available at: <http://www.sarft.gov.cn/> [last accessed May 31<sup>st</sup>, 2017].

<sup>119</sup> Landreth, J. (2016) The CFI guide to film production in China [online] available at: <http://chinafilmsinsider.com/cfi-guide-10-things-know-working-film-china/> [last accessed May 31<sup>st</sup> 2017].

adaptation of the Marvel comic, a Tibetan sage as depicted in the original was changed via casting to a Celtic mystic played by Tilda Swinton. However, while now incorporated into the law, China's film regulators have taken a slightly softer line towards such issues of late. Brad Pitt, who earned himself and his films an unofficial ban for almost 20 years after he appeared in *Seven Years in Tibet*, is expected to promote his upcoming *Allied* in person in Shanghai November 13-16, 2016. The "guiding principle and ideology" of the law is "to serve the people and socialism...and achieve social and economic unity."<sup>120</sup>

It has been commented by law firms that this new rule for foreign companies suggests that foreign studios, directors, and actors may have to be more careful in all their projects and public statements, not just in their China-specific projects, in order to ensure they have the opportunity to work on Chinese productions. This new rule shows an even greater sensitivity and desire by the Chinese government to control public expression about China, even outside the country's borders.<sup>121</sup>

Regarding the review of scripts, only the language in the NFL has changed; in practice, the new and existing process for reviewing scripts is the same. In general, the outline of a script needs to be placed on-file with the government prior to shooting. A full script shall be submitted to the government for approval when significant themes are raised such as national security, diplomacy, ethnicities, religion or the military. Greater government supervision is expected by experts at the later stages of film production, particularly at the stage of final pre-release approvals. Under the NFL, some significant changes exist regarding final pre-release approvals:

1. Final approval is being de-centralized, which means final approval will occur at the provincial level of the government film authority rather than at the central level.
2. SAPPRFT is being charged with producing specific standards for granting approval, which shall be released for public comment before being finalized and adopted.

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<sup>120</sup> Ibid.

<sup>121</sup> Schwankert S. (2016) China adopts new film law, will impact imports and Co-productions [online] available at: [http://chinafilm insider.com/china-adopts-new-film-law-will-impact-imported-co-produced-films/?utm\\_source=China+Film+Insider+Newsletter+Update&utm\\_campaign=4bfa2eba04-Daily\\_Newsletter\\_August\\_228\\_22\\_2016&utm\\_medium=email&utm\\_term=0\\_9a066b9dc2-4bfa2eba04-222351181](http://chinafilm insider.com/china-adopts-new-film-law-will-impact-imported-co-produced-films/?utm_source=China+Film+Insider+Newsletter+Update&utm_campaign=4bfa2eba04-Daily_Newsletter_August_228_22_2016&utm_medium=email&utm_term=0_9a066b9dc2-4bfa2eba04-222351181) [last accessed November 8<sup>th</sup> 2016].



3. A panel of at least five experts must be deployed to evaluate each film. Such experts will come from a pool of experts, together with any outside experts needed in relation to the specific content of a film.

The NFL delegates more responsibility to industry regulators at the provincial level and below. Thus, provincial regulators would be in charge of most of the approvals for productions and scripts. The introduction of written standards and expert participation is intended to balance the de-centralization of approvals, to ensure consistency and prevent forum shopping by producers. The written standards and expert involvement also likely exist to serve as an internal control function between different levels of government departments. As a result, producers may benefit from the increased transparency provided by written, published standards and rules for using experts. How these experts are chosen and the methods they should employ in evaluating films is to be decided in forthcoming regulations.

### [The Impact of the NFL](#)

The NFL is the first comprehensive “law” in China targeting the film industry specifically. Up until now, the Chinese film industry has been governed by a series of regulations and rules, but no top-level “law” in the Chinese legislative hierarchy has provided an overall regime to govern the film industry. This indicates that the highest levels of the Chinese government recognize the importance of guiding and stabilizing China's film industry. Demonstrating the high-level and broad intentions of the NFL, the NFL requires the national and local governments to begin taking film and cinema development into account when devising formal economic and social development plans.

Overall, the NFL has few surprises, focusing more on official codification of existing regulations, and maintaining the status quo towards foreign film producers. The NFL is being well-received by a diverse set of business executives, Chinese film studios, academics and legislators. As outlined before, due to the long preparation time of the law and the different draft versions, the adoption of the NFL by China’s top legislative body on the other hand has led to discussions and various comments by China-based law firms specialised in film; for instance, that the NFL may further restrict foreign film players whose other work includes themes sensitive in China, such as Tibetan independence.

## **Film promotion**

The NFL, addressing the central government's desire for local governments to provide film industry participants with access to resources, subsidises for making films accessible to rural audiences and the poor, and provides tax incentives. It thus encourages further development of the film business on both a central and provincial level. Details of potential areas, and how to finance films and to spread out risk in film production and distribution through incentives such as taxes, was present in the third draft and was introduced before.

## **Further regulations of box office fraud**

Foreign producers who distribute their films in China on revenue-sharing arrangements with Chinese companies have raised concerns before about falsified ticket sales figures.

Now, the NFL is also reflecting concerns of box office fraud and questionable ticketing practices. It requires distributors and cinemas to record factually correct film sales revenue and provide truthful and accurate statistical data, forbidding them from fabricating false transactions. Failure to comply is subject to SAPPRFT levying new administrative penalties of confiscation of illegal gains and heavy fines of up to five times the amount of those illegal gains. However, critical voices already question the way in which this aspect of the NFL will be implemented. Domestic film industry experts have questioned whether the size of the fine will act as enough of a deterrent given the potential profits involved in falsifying box office numbers.

Particularly Hollywood welcomed the stiff harsh penalties for box office fraud and film piracy. Many believe that ticket fraud in recent years is one of the contributing factors to the slowdown in China's box office growth this year. In 2015, ticket sales revenue expanded by 49 percent, but as of October 2016, growth had narrowed to just 4.7 percent.<sup>122</sup> The theatrical box office has greatly helped Chinese film industry by providing a needed source of revenue that is structurally less vulnerable to piracy. However, the centrality of the theatrical box office to the current Chinese film industry has led to reported abuse on occasion.<sup>123</sup>

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<sup>122</sup> Brzeski P. (2016) China Adopts Film Law, With Mixed Implications for Hollywood [online] available at: <http://www.hollywoodreporter.com/news/china-adopts-film-law-mixed-implications-hollywood-945214> [last accessed November 15<sup>th</sup> 2016].

<sup>123</sup> Ibid.

In March, China's media watchdog suspended the license of a local distributor that was caught pumping up box-office figures for Hong Kong-Chinese action movie *Ip Man 3*. Under the NFL, in addition to license suspensions, film distributors and theatres can have all of their illegal revenue confiscated and be fined upwards of 500,000 yuan if they falsify ticket sales data. If their illegal revenue exceeds 500,000 yuan, the fine will be up to five times the illegitimate revenue.<sup>124</sup>

### China tightens control over live-streaming industry<sup>125</sup>

Good examples of the fast-changing landscape of China's film market are not only the almost weekly announcements of new films coming on screen, or China-US film and production company cooperations, but also the new regulations aiming to control content. The most recent one announced in the first week of November 2016 by the government concerns online streaming to curtail the fast-expanding online sector through new regulations and licenses.<sup>126</sup>

Live-streaming platforms are very popular in China, but from now on, they are only allowed to operate with state approval. The SAPPRFT announced a drastic tightening of existing rules on live-streaming on 9 September. In the future, the state will only grant licenses to state-owned enterprises with at least ten million yuan in equity (1.34 million euros).<sup>127</sup> China's live-streaming industry is booming. Leading media platforms such as Ingkee (映客) and Douyu TV (斗鱼) regularly attract between 50 million and 120 million users. Live-streamers are engaged in all kinds of activities on the Web, from discussing unhappy relationships to teaching English and giving practical tips on cooking.<sup>128</sup> The most popular live-streamers are young women who record themselves flirting, singing and dancing. Official censors such as The Cyberspace

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<sup>124</sup> Ibid.

<sup>125</sup> Merics newsletter, No 5/2016, China tightens control over live-streaming industry (2016) [online] available at: [https://www.merics.org/sites/default/files/2017-09/China\\_Update\\_EN\\_5\\_2016.pdf](https://www.merics.org/sites/default/files/2017-09/China_Update_EN_5_2016.pdf) [last accessed: February 19th 2019]

<sup>126</sup> Ibid.

<sup>127</sup> Huxui (2016) 8个问题带你看懂广电发布的直播许可证：中小平台面临生死考验 [online] available at: <https://www.huxiu.com/article/163647.html> [last accessed May 30<sup>th</sup> 2017].

<sup>128</sup> Yuan, L. (2016) Live-streaming Apps flourish in China [online] available at: <http://www.wsj.com/articles/live-streaming-apps-flourish-in-china-1462995001> [last accessed May 30<sup>th</sup> 2017].

Administration of China (CAC) (网信办), have repeatedly criticised vulgar and light erotic content on the Chinese internet.

Since live streaming is very popular in China, the Ministry of Culture, the Ministry of Education and SAPPRFT have taken note and have started cracking down on streaming sites and cutting “lewd content”.<sup>129</sup> Furthermore, new regulations are intending to curb vulgarity and unauthorized news distribution. In addition, the regulator also said that there are more than 300 platforms currently operating as unauthorized news broadcasters. As stated, “[t]he regulations are to strengthen online streaming management and promote the healthy and orderly development of the sector”.<sup>130</sup> Platforms operating without a license, or who cannot get one, have to shut down.

Strict regulations that range from obtaining licenses to transmitting content are now intended to help the Chinese state get this growing market under its control. The main live-streaming platforms have already put large teams of in-house censors in place to monitor content. Half of Douyu TV’s 600 employees are currently employed as censors.

In addition, CAC from December 1<sup>st</sup> 2016 require that live streaming hosts have to censor content before it is broadcast on the Internet. It will also require hosts to register business and personnel details and those carrying news or entertainment have to apply for licenses. Platforms carrying on-screen text or other feedback must employ censors to ensure that users’ comments conform with the law.<sup>131</sup>

Chinese netizens have faced increasing controls over what they can see and access on the Internet in recent months. In June, popular Internet figure Papi Jiang, known for her satirical videos, had some of her videos taken down from Youku.<sup>132</sup> In May, authorities were mulling over a policy which would allow some state-owned enterprises to buy “special management stakes”

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<sup>129</sup> See for example Siqu, C. (2014) Media regulator bans lewd content [online] available at: <http://www.global-times.cn/content/891557.shtml> [last accessed December 24th, 2018].

<sup>130</sup> Frater P. (2016), China Moves to Regulate Live Streaming [online] available at: <http://variety.com/2016/digital/asia/china-curbs-live-streaming-1201910459/> [last accessed November 6<sup>th</sup> 2016].

<sup>131</sup> Ibid.

<sup>132</sup> Meng T. (2016) The meteoric rise of (recently censored) Chinese Internet celebrity Papi Jiang [online] available at: <https://www.hongkongfp.com/2016/06/06/the-meteoric-rise-of-recently-censored-chinese-internet-celebrity-papi-jiang/> [last accessed May 30<sup>th</sup> 2017].

in popular video streaming sites.<sup>133</sup> In April, iTunes Movies and iBooks were blocked in China.<sup>134</sup>

Just very recently, at the end of December 2016, new regulations have started to block public accounts from posting ‘user-generated audio or video’, often one of the few sources of information outside state media, often relaying the government’s version of events. China has banned the vast majority of Internet users from sharing videos which are not from official sources on social media, tightening censorship. A notice issued by SAPPRFT noted that Weibo, WeChat and other online social media are not allowed to disseminate user-generated audio or video programs about current events, and that companies must “strengthen management” of videos.<sup>135</sup>

### Copyright in China

After adopting the policy of Reform and opening to the outside world, China quickly established its modern IP system. All IP laws are in accordance with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), Paris Convention and Berne Convention.<sup>136</sup> China enacted its Copyright Law in 1991. The National Copyright Administration and its regional branches, tasked with regulating copyright, were founded in 1985.

The development of China’s recent copyright law is as follows:

- The Copyright Law of the People’s Republic of China was adopted by the National People’s Congress’s (NPC) Standing Committee in 1990 and came into effect on 1 June 1991.

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<sup>133</sup> Hong Kong FP (2016) China mulls new ways to control video websites [online] available at: <https://www.hongkongfp.com/2016/05/23/china-mulls-new-ways-control-video-websites/> [last accessed May 30<sup>th</sup> 2017].

<sup>134</sup> Hong Kong FP (2016) Apple’s iTunes movies and iBooks blocked in China [online] available at: <https://www.hongkongfp.com/2016/04/22/two-apple-services-blocked-in-china/> [last accessed May 30<sup>th</sup> 2017].

<sup>135</sup> Haas B. (2016) China restricts sharing of ‘unofficial’ videos on social media [online] available at: [https://www.theguardian.com/world/2016/dec/21/china-restricts-sharing-of-unofficial-videos-on-social-media?CMP=share\\_btn\\_tw](https://www.theguardian.com/world/2016/dec/21/china-restricts-sharing-of-unofficial-videos-on-social-media?CMP=share_btn_tw) [last accessed January 3<sup>rd</sup> 2017].

<sup>136</sup> Li M. (2010) Overall Evaluation Report Project Result IPR 2 [online] available at: <http://www.ip-key.org/en/resources/ip-information-centre> [last accessed January 3<sup>rd</sup> 2017].

- In 1992, China and the US signed a Memorandum of Understanding (MOU) on IP.<sup>137</sup> In accordance with this agreement, China became a signatory to the Berne Convention in 1992 and the Geneva Convention in 1993.
- First revision 2001: to bring the Copyright Law into line with TRIPS.
- Second revision 2010: to enforce the WTO panel decision of DS362<sup>138</sup>.
- Third revision 2012: to further improve the copyright law. By the end of 2012 three drafts of the proposed third amendment of the Copyright Law had been circulated by the National Copyright Administration (NCA) in advance of eventual submission to the NPC. Proposals for stronger penalties against online infringement, an expanded role for collective rights management organizations, and fair use have sparked heated debate among right owners, media firms, Internet service providers and the public.<sup>139</sup>

### Recent developments of the Copyright Law

In the past years, the Chinese government has enacted and amended relevant IP law and regulations numerous times, including the legislation for protecting digital content for copyright. From the revised Copyright Law in 2001 to the new Regulation on the Protection of the Right of Communication of Information on Network launched in 2006, the judicial protection system of copyright law has been revised and strengthened.

In spite of its broad compliance with international norms of copyright protection, Chinese law frames copyright as a form of statutory right granted by the state, rather than as a form of ‘natural’ right. This approach is consistent with the Socialist principles that underpin the Chinese legal system, and arguably echoes Confucian views of creativity as part of a common cultural

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<sup>137</sup> (Newberry 2002-2003:1439)

<sup>138</sup> China – Measures affecting the Protection and Enforcement of Intellectual Property Rights, Report of the Panel, World Trade Organization, WT/DS362/R, 26 January 2009 (09- 0240). On January 26, 2009, the panel decision by DBS/WTO concerning the IP disputes settlement (WT/DS362/7) between China and US held that article 4.1 of the Copyright Law violated Berne Convention and TRIPS Agreement. Therefore, the Copyright Law must be amended in the specified time period.

<sup>139</sup> See Xue H. (date unknown) A User-Unfriendly Draft: 3rd Revision of the Chinese Copyright Law’ [online] available, at: <http://infojustice.org/wp-content/uploads/2012/04/hongxue042012.pdf> [last accessed December 23 2018].

heritage.<sup>140</sup> In attempting to find a balance between the benefits of rewarding copyright owners for their intellectual and financial investment and potential harm to society of restricting access to works, legislators have emphasised the protection of public interests and opposed the absolute privatization of intellectual creations.<sup>141</sup>

Although trade relations remain an important factor, international pressure is no longer the only driver of copyright's development. There are signs that China's policymakers are becoming more conscious of the value of copyright in creating legal frameworks capable of supporting domestic creative and cultural industries and promoting the interests of local stakeholders.

Thus, the copyright legal framework continues to develop. The country is revising the Copyright Law to comply with international standards and specify the rights and obligations of producers of creative works. Over the past five years, China has done a lot to improve the copyright system across the board, providing not only regulations but also interpretations with guidelines to make sure that the entertainment industry is able to produce and distribute content. This has been mainly driven by the demands/requirements of domestic innovators and creators.

Whereas the third revision of the law has been welcomed by some, as it integrates and amends many provisions, and improves it to a great extent by promoting the protection of right holders of copyright and related rights, thereby facilitating copyright trade<sup>142</sup>, the draft has been also criticised for being user-unfriendly, failing to meet expectations<sup>143</sup>, and as still having many flaws, being far from rigorous and mature.

Major criticised points are:

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<sup>140</sup> Rawnsley, G.D., Rawnsley, M. (eds) (2002) *Routledge Handbook of Chinese Media*. Routledge: Oxon. Qu: "Under socialist copyright law, any intellectual creation is achieved on the basis of accumulation of cultural heritage. Therefore, copyrights over intellectual works cannot be absolute or unrestricted. In order to accommodate the interests of both copyright holders and the general public, certain limitations of copyright have been provided by law for economic or cultural reasons (e.g. Education) since the copyright system first emerged" (Notes).

<sup>141</sup> Qu, S. (2002). *Chinese Copyright Law*. Beijing: Foreign Languages Press.

<sup>142</sup> Li Luo L., Chan D. (2012) *Chinese Copyright Law: the third revision* [online] available at: <http://www.victoria.ac.nz/law/research/publications/about-nzaci/publications/cljpdcp-journals/volume-18,-2012/Li.pdf> [last accessed May 30th 2016].

<sup>143</sup> See supra note 121.

- The shrinking limitations and exceptions – where the draft fails to remove existing unreasonable restrictions, or subjects them to new conditions; i.e. unpaid use and compulsory (statutory) licensing
- Expansive rights – the scope and substance of rights for copyright owners is strengthened; i.e. phonogram producers and performers will be allowed to be reasonably remunerated for broadcasting or diffusing sound recordings in other means.
- Technological Measures and Rights Management Information – protection for technological measures and rights management information is strengthened. The right holders are allowed to deploy technology measures to prevent or restrict its work from being copied, browsed, or communicated via information networks.
- Reinforcement of collective management – reinforcement of the status and power of collecting societies.
- Enhancing enforcement – civil remedies and damages could be several times over the value of licensing fees if a right holder's actual loss and infringer's illegal gains cannot be determined. In addition, the Draft also introduces semi-statutory damages of up to one million RMB where copyright is registered with the National Copyright Administration of China (NCAC).<sup>144</sup>

In addition, the draft leaves many important issues pending by authorising the State Council to regulate for the right of communication through the information network, and the exploitation of works whose authors are not identified.<sup>145</sup> The consultative approach adopted by the government and its willingness to allow debates about the law's amendment to occur so publicly suggest that copyright reform is now about much more than a desire to placate international trading partners.<sup>146</sup> China's policymakers appear to be turning towards the much more complex task of managing the interests, demands and conflicts of domestic stakeholders in a

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<sup>144</sup> Ibid.

<sup>145</sup> See *supra* note 123.

<sup>146</sup> Montgomery, L., Xiang, R. (2015), The changing role of copyright in China's emergent media economy. In Rawnsley, Gary D. & Rawnsley, Ming-Yeh T. (Eds.) *Routledge Handbook of Chinese Media*. Routledge: Oxon, pp. 315-329.



media economy that is being transformed by new technologies, commercial opportunities and growing awareness of the opportunities and costs associated with expanding copyright.<sup>147</sup>

China's focus on reforming other types of IP law contributed to a two-year delay before the third draft was recently released on June 6, 2014. Even though this draft was not released until June 2014, Chinese courts heard some of China's most important copyright cases between the second and third drafts. Not only have they increasingly provided adequate damages for copyright owners, embodied in the recent three million RMB judgment for the owner of the short story *Yongsheng* (永生) by the Shanghai Second Intermediate Court, but lawsuits against media giants such as Baidu and enforcement actions against media providers including Kuaibo are beginning to limit the availability of pirated videos and music.

China's judiciary is not alone in expanding the recognition of copyright rights and "international" copyright norms. The new draft of the Copyright Law, which was composed by the NCAC while considering opinions submitted by the public and both domestic and international organizations and governments, exhibits China's dedication to changing the Copyright Law.<sup>148</sup>

During the interviews carried out in the foreign government and business community being situated in China, this statement, particularly regarding the length of the process to amend the existing copyright law has been confirmed by some of the interviewees. According to the outside view of Western businesses, associations, and policy makers, the copyright legal framework continues to develop.

The most important changes have been produced in how to protect content in the online context, distribution/streaming online, the access to content, and the legal requirements to protect IP holders' content. The amendments will protect copyrights with detailed clauses targeting infringements that have emerged in the digital era. Thus, the revision of copyright law is also influenced by the development of technologies and the opportunities and challenges those innovations are offering to produce and distribute online audio-visual content. In this context, there is some fear that the copyright expansion might lead to a limited access of information, and that China's innovation strategy rather should address issues of access, dissemination and

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<sup>147</sup> Ibid.

<sup>148</sup> Kossof P. (2014) First Draft Revision of Chinese Copyright Law Under XI Administration Demonstrates Commitment to Significant Copyright Reform. Asia Law Portal.

exploitation of copyright works balancing the interest between the different stakeholders instead of imitating legislative models of developed countries.<sup>149</sup>

Foreign public organisations mentioned that the Chinese government is open to details and having a constructive dialogue. There is a “great appetite” for information about solutions developed in the West to solve these issues. The amendment of the Copyright Law currently involves a lot of detailed discussions and exchanges on an ongoing basis with the UK government and relevant IP organisations.<sup>150</sup>

However, there are still remaining questions regarding protection, and how effective the system works to enforce rights against someone who infringes IP, even though the government has strengthened the enforcement of the law. Since China’s film industry is booming, officials publicly state that greater success and commercial benefit will be only achieved through copyright protection.<sup>151</sup>

However, in the Internet context, many copyright infringements still happen to the detriment of copyright owners. The BAT are aware of those infringements and therefore have established, for example together with UK business associations<sup>152</sup>, a Memorandum of Understanding for IP protection. Last year, a successful enforcement operation has been completed together with Alibaba. This cooperative approach has led to an improvement of their automatic system for take-down procedures (improving the user interface, more filters, etc.) in order to make off-line enforcement easier.

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<sup>149</sup> Jie H. (2014) Rethink copyright reform: should China imitate or innovate? *JICLT Journal of International Commercial Law and Technology*, 9(2), pp 94-104.

<sup>150</sup> Beijing, British Ambassador’s Residence, IP Briefing, 14th March 2016, Quote of an interviewee during a panel discussion, Beijing 2016.

<sup>151</sup> Zhonglun R., president of the Film Copyright Association of China and Shanghai Film Group Corp, said, "As China's film industry hits new heights, deciding how to benefit commercially from copyright operation and protection is the key to greater success." Xiaochen, S. (2015) Anti-piracy forum calls for international cooperation [online] [http://www.chinadaily.com.cn/culture/2015-06/17/content\\_21031140.htm](http://www.chinadaily.com.cn/culture/2015-06/17/content_21031140.htm) [last accessed February 28th, 2019].

<sup>152</sup> Press Release UK Government (2015) Alibaba and China Britain Business Council collaborate to remove counterfeit goods [online] available at : <https://www.gov.uk/government/news/alibaba-and-china-britain-business-council-collaborate-to-remove-counterfeit-goods> [last accessed February 27th 2019].

## Online infringements and Government Actions

In April 2014, China became the third member of the World Intellectual Property Organization (WIPO) to accept the Beijing Treaty. The agreement lets performers authorize or prohibit reproduction and distribution of their works and enables them to seek compensation.

To address the issue of copyright online infringements, the NCAC has strengthened enforcement against online piracy in its annual campaign against copyright violations. The campaign has uncovered 4,600 online copyright infringements, shut down 1,926 websites and confiscated 1,178 illegal servers since its launch in 2005. The measures discussed above should also be seen in the context of the Chinese government's effort to crack down online piracy, particularly the 2015 Sword Network Campaign.<sup>153</sup>

In addition, a so-called ‘anti-piracy forum’ was organised in June 2015, calling for international cooperation. Experts have welcomed updates to the legal framework to support copyright protection and to tackle piracy as digital access to foreign films and TV series are posing new challenges. Advances in online streaming technology have made watching Hollywood blockbusters and foreign TV series on mobile platforms routine for young Chinese people, following HBO's Game of Thrones availability on Tencent's video website, using the paid services. Interviewees mentioned that they find it is better to get good content through legitimate channels instead of watching pirated content in low quality.

However, online piracy has badly affected the commercial development of film copyright away from the big screen as sales of legal DVDs face challenges from free illegal downloads or streaming. Particularly, unauthorized downloads and streaming of foreign films and TV shows remain a pressing issue that hampers China's attempts to become a strong IP power, despite the increase in the number of legal arrangements, such as Tencent's deal with HBO to screen Game of Thrones.<sup>154</sup>

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<sup>153</sup> Details (in Chinese), see NCAC (2015) 关于开展打击网络侵权盗版“剑网 2015”专项行动的通知 [online] available at: <http://www.ncac.gov.cn/chinacopyright/contents/6240/253991.html> [last accessed November 2<sup>nd</sup> 2016].

<sup>154</sup> Anti-piracy forum calls for international cooperation, (June 18, 2015), <http://english.ipraction.gov.cn/article/News/IntlCooperate/201506/20150600055839.shtml> [last accessed November 2<sup>nd</sup> 2016].

On 11 July 2015, some of China's most popular video streaming platforms (including Sohu, Tencent, Youku and Tudou) established the Alliance for Licensed Video Streaming<sup>155</sup> at the seminar on protection of copyright in cloud storage, organized by the China Copyright Society. The members of the Alliance pledged to provide only licensed content on their platforms. They moreover agreed to cooperate closely in taking-down infringing disseminations. The Online Video Streaming Alliance follows in the footsteps of a similar alliance between online music streaming platforms, namely the China Online Licensed Music Facilitation Alliance, established in Beijing on 29 January 2015.<sup>156</sup>

### Platforms and their business models

#### **New business models to monetise online content and the role of digital copyright**

##### **Online content**

The last paragraph of Barraclough's article summarises the rise of China's film industry aptly.<sup>157</sup> In a nutshell China's film industry is multi-layered, including new business models around copyright. Furthermore, in a trend extending beyond China, the boundaries between film and other audio-visual content are becoming increasingly blurred and are often only produced for mobile applications. Consumer viewing habits are also changing.<sup>158</sup>

Platforms provided by the BAT, introduced in chapter three, provide different types of content ranging from blockbusters, self-produced content such as TV shows to user-generated content, sometimes both licensed and unlicensed.<sup>159</sup> The general consensus of interviewees is that there is a shift towards different types of subscription models, from annual subscriptions to pay-per-view, advertising, or corporate sponsorships.<sup>160</sup> A study of the BAT suggests that their objective is to keep consumers within their respective closed systems for as long as possible by offering

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<sup>155</sup> Details (in Chinese), see NCAC (2015) 互联网视频正版化联盟成立 [online] available at:

<http://www.ncac.gov.cn/chinacopyright/contents/518/255892.html> [last accessed November 2<sup>nd</sup> 2016].

<sup>156</sup> For more information, see the music part of this report.

<sup>157</sup> Barraclough E. (2016) The rise of China's film industry [online] available at: [http://www.wipo.int/wipo\\_magazine/en/2016/02/article\\_0004.html](http://www.wipo.int/wipo_magazine/en/2016/02/article_0004.html) [last accessed December 1<sup>st</sup> 2016].

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid; and personal interview notes.

convenience to registered users to entice them to spend as much money as possible. In addition, these platforms have collected an enormous amount of user data over time through Internet purchases or social media usage behaviour. This data can in turn be studied for consumer preferences when making films.<sup>161</sup>

Given China's copyright history and the well-known piracy challenges foreign companies faced when bringing their content and IP to China (as outlined above), it was thought the subsequent development of business models to monetise online content while respecting copyright would be just as difficult. However, following China's development of copyright and creative industries, even long-time sceptics have started revising their opinion. These include Anderson<sup>162</sup>, Kelly<sup>163</sup>, and Priest<sup>164</sup>. In his recent article, Priest pointed to a trend in China's content industries and online intermediaries to build their business models based on copyright and exclusivity.<sup>165</sup>

Has China discovered the next-generation monetization model for online content? Priest believes so, making his argument in respect of digital music, e-book publishing and online audio-visual content. He outlines the changes in the related industries and the reasons behind them. The changes towards a business model with stronger protection of copyright are most obvious in audio-visual content which is an important part of online films and streaming, as previously explained. It is for this reason that the changes in the online streaming world will be discussed first, followed by changes in the film industry. Both are heavily influenced by technological developments.

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<sup>161</sup> See *supra* note 137.

<sup>162</sup> See for example Anderson C. (2008) *The long tail: Why the future of business is selling less of more*. Hachette Books, and Anderson, C (2009) *FREE: The future of a radical price*. Hachette Books.

<sup>163</sup> See Kelly K. (2010) *How to Thrive Among Pirates* [online] available at: <http://kk.org/thetechnium/how-to-thrive-a/> [last accessed December 23rd, 2018]. For a different take that illustrates how piracy harms expression in the Nigerian film industry, see Pager S.A. (2012) *Accentuating the Positive: Building Capacity for Creative Industries into the Development Agenda for Global Intellectual Property Law*, 28 AM. U. INT'L L. REV. 223, pp 260-67.

<sup>164</sup> See generally Priest E. (2008), *Why Emerging Business Models and Not Copyright Law Are the Key to Monetising Content Online*, in Fitzgerald, B. Et al (2008) *Copyright Law, Digital Content and the Internet in Asia-Pacific*. Sydney University Press: Sydney.

<sup>165</sup> Priest E. (2016), *Meet the new media, same as the old media: Real lessons from China's digital copyright industries*. 23 Geo. Mason L. Rev. 1079, p1082.

What are the reasons for the rising popularity of copyright-based business models? This change began in 2009. Until then, two main Chinese streaming video portals, Youku.com and Tudou.com, streamed pirated content from domestic and international producers alike.<sup>166</sup> Copyright owners sued the websites for infringement, but their legal action had no effect.<sup>167</sup> The turning point came when brands started becoming increasingly concerned about being associated with pirated content. An anti-video piracy group, called the China Online Video Piracy Alliance, sued The Coca-Cola Company and PepsiCo, arguing that the appearance of their ads with unlicensed content on Youku.com made them active contributors to copyright infringements.<sup>168</sup> This prompted video platforms to react by replacing unlicensed content with licensed ones.<sup>169</sup> Since then copyright owners of film and TV rights have started to earn hundreds of millions of dollars in licensing fees.

What should be mentioned in China's licensing context, is that it works differently from other countries because Chinese Internet companies seek exclusive licenses. This model is still valid in 2016, according to some of the interviewees in film and music who confirmed that licensed content is only bought on a package basis for a certain time. In addition, the Internet companies do not publish the click-rates on individual films or music pieces, unlike Apple's iTunes. This makes new negotiations of licensing fees difficult for copyright owners or rights companies.

Back in 2010, the race to acquire exclusive licenses was so frenzied that it created an unprecedented content-licensing bubble. The licensing fees for Chinese TV shows increased by more than 180-fold in two years because the Internet platforms competed on the number of users as they began to understand content as a strategic differentiator.<sup>170</sup> The difference in the current market compared to 2010 is that prices tend to be very competitive or as copyright owners might say, much lower than in other parts of the world. Acquiring popular content meant creating more web traffic and attracting more clients to advertise. Moreover, good content was assumed to improve user loyalty.<sup>171</sup> Thus the Internet companies have developed from being an intermediary of content, to a content and copyright owner. They state publicly that this is

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<sup>166</sup> See Priest E. (2015) *Acupressure: The Emerging Role of Market Ordering in Global Copyright Enforcement*, 68 SMU L. REV. 169, pp 185-86.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.*, p. 189.

<sup>169</sup> *Ibid.*, p. 171.

<sup>170</sup> *Ibid.*, p. 187.

<sup>171</sup> See *supra* note 145, p. 1084.

their business model together with greater copyright protection. In conjunction with a stronger copyright law, these companies want to ensure their investments are secured through proper enforcement in case of infringement.<sup>172</sup>

Priest, who followed the development over time, notes that the self-interest and the desire for reciprocal treatment prompted most of the major players in China's video streaming area to change their norms around copyright compliance. This helped to ensure that competitors largely played by the rules.<sup>173</sup> The Internet companies holding valuable licensed content were quick to enforce their rights against competitors. In addition, those companies also further monetized those licenses by sublicensing competing sites.<sup>174</sup> This development went in parallel with China's increased development of local IP, providing a more sensitive environment that respected IP rights created in China. The Internet companies that were now content companies of external/licensed content, further invested in content production by themselves. One reason was to reduce license fees and keep business in control. Thus, they started looking for talented contributors from their websites and invested in production technology and infrastructure.<sup>175</sup>

In 2015, the Internet streaming platform Youku announced that it will invest approximately 1.6 billion USD in original content production over the next three years.<sup>176</sup>

This investment of Internet platforms in content production reflects not only a copyright-based business model but also helps independent creators get paid for their works. Other Internet giants such as Alibaba, now the owner of Youku.com and Tencent, are also investing large sums in content production.<sup>177</sup> The hope is to move from a "low-quality content for-free" approach to an approach based on high-quality content offered in premium subscriptions.

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<sup>172</sup> Ibid.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

<sup>176</sup> Entertainment one Ltd (2016) Half Year Results [online] available at: [http://entertainmentone.com/eOne/media-library/eOne/eOneGlobal/Investors/Half-year-annoucement-\(21-11-16\)-Final.pdf?ext=.pdf](http://entertainmentone.com/eOne/media-library/eOne/eOneGlobal/Investors/Half-year-annoucement-(21-11-16)-Final.pdf?ext=.pdf) [last accessed October 2016].

<sup>177</sup> Barraclough L. (2015), Alibaba to Invest in Paramount's 'Mission: Impossible-Rogue Nation' [online] available at: <http://variety.com/2015/film/global/alibaba-to-invest-in-paramountsmission-impossible-rogue-nation-1201526937/> [last accessed December 23rd 2018]; Frater P. (2015) China 's Tencent Pictures to Invest in Legendary's 'Warcraft' [online] available at: <http://variety.com/2015/bizlasia/chinas-tencentpictures-unveils-deals-with-legendary-and-wanda-1201595740/> [last accessed October 2016].

However, video streaming in China was never profitable, and the aim of the platforms is to achieve higher revenues on pay-per-view business models.<sup>178</sup>

Although the revenue of streaming platforms is still low. For example, Youku.com is reported to have processed 24.5 million pay-per-view and subscription orders in the past five years. This is still a relatively small number, but it does indicate that Chinese consumers are growing more accustomed to paying for content.<sup>179</sup> iQiyi, the video arm of Chinese-Internet search-giant Baidu recently reported a substantial increase in premium content subscriptions. Their model offers subscribers immediate access to all episodes of popular series whereas non-subscribers have to wait for one free episode per week.<sup>180</sup>

## Film

As discussed in the previous paragraph the decline of online piracy, both guided by the regulator and the business strategy of offering exclusive content, has resulted in higher copyright licensing revenues.<sup>181</sup> This is encouraging as poor copyright enforcement inflicts significant and persistent harm on China's music and film industries.<sup>182</sup> This is based on Priest's analysis about whether piracy benefits the creative industry in China's music and film market, and the ways creative professionals have found to monetize their works in a high-piracy environment.

However, despite rampant content piracy, as discussed in the previous chapters, China's film industry remains a success story. Its profitability is largely based on the charging of admission fees in movie theatres because compared to the US, the sale of ancillaries is not as developed yet (see page 13). This revenue model is decidedly dependent upon a copyright law that provides clarity on ownership rights for theatrical licensing and revenue distribution, delineates the

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<sup>178</sup> Horwitz T. (2016) How the Youku Tudou Acquisition Can Benefit Alibaba? [online] available at: <https://www.forbes.com/sites/greatspeculations/2016/03/10/how-the-youku-tudou-acquisition-can-benefit-alibaba/> [last accessed February 19th, 2019].

<sup>179</sup> Youku Tudou Inc. (2015) 2014 Annual Report (SEC FoRM 20F) 77

<sup>180</sup> Global Times (2015), Online Video Sites Bet Chinese Viewers Ready to Pay for Content [online] available at: <http://www.globaltimes.cn/content/937332.shtml> [last accessed December 23rd 2018].

<sup>181</sup> See supra note 145, p. 1088.

<sup>182</sup> See Priest E. (2014) Copyright Extremophiles: Do Creative Industries Thrive or Just Survive in China's High-Piracy Environment? 27 HARV. J.L. & TECH. 467, 495.



scope of those rights, and helps film makers enforce the rights of unauthorized and unremunerated performances of a film.<sup>183</sup>

Furthermore, TiVo-style set-top boxes preloaded with software for accessing licensed video subscription services also holds promise for expanding licensing revenue.<sup>184</sup> Access to this type of revenue-based licensed content is crucial to local film makers since most of the Chinese films never will be shown in theatres.

It has not taken long for pirates to discover that those set-top boxes are an additional source of income as they have adapted their ways to avoid copyright enforcement. Some boxes are preloaded with content, whilst others load when connected to the Internet.<sup>185</sup> Interestingly, it was reported at an IP event in Beijing (that the authors were attending) and in China Daily that CCTV and TVB in the US sued the Hong Kong-based Create New Technology Ltd (CNT) (the main manufacturer of the set-top box device) as well as GreatVision Network Technology Co in Shenzhen at the US District Court for the Central District of California in Los Angeles.<sup>186</sup> Allegedly, this case was in respect of the setting up of a broadcasting network that illegally streams CCTV and TVB channels using peer-to-peer technology. The set-top box called TVpad sold for a flat fee of 309 USD at CNT's online store. Users could download free apps that allow them to access more than 100 Chinese mainland and Hong Kong channels.<sup>187</sup> CNT's website states that "TVpad is the best streaming media device for Chinese living overseas" and that the company's only responsibility is to provide the hardware<sup>188</sup>. The neutrality of the manufacturer was questioned since an unknown third party – that might have been controlled by CNT -

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<sup>183</sup> See supra note 145, p. 1089.

<sup>184</sup> Gu W. (2015) Tencent Plan to Invest in Internet-TV Startup in Rare Collaboration [online] available at: <http://www.wsj.com/articles/alibaba-tencent-plan-to-invest-in-internet-tv-startup-1439377788> (noting numerous investments in content companies that Alibaba and Tencent have made in recent years).

<sup>185</sup> Szymanski E. (2015) What's holding back China's movie industry? [online] available at: <http://www.managingip.com/Blog/3465765/Whats-holding-back-Chinas-movie-industry.html> [last accessed December 23rd 2018].

<sup>186</sup> Beijing, AmCham China Panel, "IP in China's Entertainment Industry — the Big Issues", March 21<sup>st</sup>, 2016.

<sup>187</sup> Zhu L. (2015) CCTV, TVB sue set-top maker, allege piracy in US [online] available at: [http://www.china-daily.com.cn/kindle/2015-04/02/content\\_19982544.htm](http://www.china-daily.com.cn/kindle/2015-04/02/content_19982544.htm) [last accessed February 27th 2019].

<sup>188</sup> Ibid.

developed the apps. In November 2015, a permanent injunction was issued by the judge to stop the distribution of those boxes.<sup>189</sup>

### Chinese consumers – unknown characters?

After China's box office expanded by about 50 percent in 2015 to 6.78 billion USD, many analysts predicted the country would push past North America to become the world's largest theatrical market by the end of 2017.<sup>190</sup> In the first half of 2016 China's growth rate slipped to 21 percent. Any other major film territory would have rejoiced at that expansion rate, but for China it marked a dramatic slowdown. Ticket sales in China over the last six months were down by 10 percent compared to the same period last year.<sup>191</sup> Movie ticket receipts weakened even though cinema chains were building theatres at a rapid pace.

These headwinds have caused growing anxiety in Hollywood because it is increasingly looking at markets beyond the US and has placed big bets on the burgeoning appetite of Chinese consumers for entertainment. US studios are increasingly gearing their would-be blockbusters to appeal to audiences in China, doing deals with local companies to improve their chances of big business there.<sup>192</sup>

The recent downturn has made Hollywood and Chinese regulators nervous. Besides New York, California is benefitting a great deal from Chinese investments, totalling 15.7 billion USD in

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<sup>189</sup> China Central Television v. Create New Technology (HK) Limited, Case No. CV 15-01869 MMM (MRWx), June 11 2015, [online] available at : <https://www.leagle.com/decision/infdc020150612790> [last accessed February 27<sup>st</sup> 2019].

<sup>190</sup> Brzeski P (2015). China Box Office Grows Astonishing 48.7 Percent in 2015, Hits \$6.78 Billion, [online] available at: <http://www.hollywoodreporter.com/news/china-box-office-grows-astonishing-851629> [last accessed December 31<sup>st</sup> 2015].

<sup>191</sup> According to data from Beijing-based Ent Group., The fall was the first year-over-year quarterly decline in half a decade; see also Hollywood Reporter (2016) What's Behind China's Sudden Box-Office Slump? [online] available at: <http://www.hollywoodreporter.com/news/whats-behind-chinas-sudden-box-912718> [last accessed December 31<sup>st</sup> 2015].

<sup>192</sup> Faughnder R. and Wang Y. (2016) A dramatic box-office slowdown in China makes Hollywood nervous [online] available at: [http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-china-box-office-20161024-snap-story.html?utm\\_source=China+Film+Insider+Newsletter+Update&utm\\_campaign=5b5f571ce0-Daily\\_Newsletter\\_August\\_22\\_22\\_2016&utm\\_medium=email&utm\\_term=0\\_9a066b9dc2-5b5f571ce0-222351181](http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-china-box-office-20161024-snap-story.html?utm_source=China+Film+Insider+Newsletter+Update&utm_campaign=5b5f571ce0-Daily_Newsletter_August_22_22_2016&utm_medium=email&utm_term=0_9a066b9dc2-5b5f571ce0-222351181) [last accessed December 23<sup>rd</sup> 2018].

2015.<sup>193</sup> California's film media outlets discussed China's dropping box office figures from various positive and negative aspects:

China won't be surpassing North America as the world's largest box office territory quite as soon as expected. Reports of China's imminent ascendance to the top of the global film market appear to have been slightly exaggerated.<sup>194</sup>

China's regulators took the unprecedented step of allowing Hollywood releases into the country during its traditional "blackout" period between late June and early August 2016. This period which is usually reserved for domestic theatrical titles, saw the release of Paramount's *Teenage Mutant Ninja Turtles: Out of the Shadows* amongst others. The film was granted a July 2<sup>nd</sup> release date.<sup>195</sup>

Industry experts have scrambled to explain the phenomenon. However, the picture is complex and five key factors were identified:

#### 1) The line-up of films and the issue of quality

One of the issues seems to be a steep decline in the number of local Chinese hits. After racking up huge numbers during Chinese New Year in February 2016 — Stephen Chow's *The Mermaid* grossed 528 million USD alone in Q1- local movies totalled just 374 million USD during Q2, a 21 percent drop compared with the same period last year.<sup>196</sup> To date no other film has left a box office impact like *The Mermaid* or last year's July success, *Monster Hunt*. The film that opened on July 16, 2015 went on to earn a record of 385 million USD.<sup>197</sup> Chinese movie fans

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<sup>193</sup> Kitroeff N. (2016) California actually benefits a lot from trade with China [online] available at: <http://www.latimes.com/business/la-fi-china-trump-california-20161024-snap-story.html> [last accessed December 23rd 2018].

<sup>194</sup> See supra note 172.

<sup>195</sup> Brzeski P. (2016) China Lifts Summer Blackout on Hollywood Films Amid Box-Office Slowdown [online] available at: <http://www.hollywoodreporter.com/news/china-lifts-summer-blackout-hollywood-909264> [last accessed December 23rd 2018].

<sup>196</sup> Brzeski P. (2016) What Hollywood Can Learn From China's \$510M Box Office Hit 'Mermaid' [online] available at: <http://www.hollywoodreporter.com/news/what-hollywood-can-learn-chinas-871535> [last accessed December 23rd 2018].

<sup>197</sup> Brzeski P. (2015) China Box Office: Local Blockbuster 'Monster Hunt' Unseats 'Furious 7' as Highest Grossing Film Ever, [online] available at: <http://www.hollywoodreporter.com/news/monster-hunt-overtakes-furious-7-822468> [last accessed December 23rd 2018].

have taken to social media to welcome the new releases with many also complaining about a dearth of quality films at the cinemas lately. Users of Weibo, China's equivalent of Twitter, even suggested to others not watch "crappy" local films and to wait until the Film Bureau imports "better" foreign films.<sup>198</sup>

Experts think that one of the reasons for the box office slowdown is the quality of films screened.<sup>199</sup> An interviewee said he rarely watches films anymore because there is a lack of films with good and interesting content. This assessment was supported by Wanda Group's Wang Jianlin who stated that China needs better movies in order to draw the masses to cinemas. The box office boom that inspired a wave of investment in pictures were simply rushed to market in order to take advantage of the trend. The industry that fielded a couple of home-grown blockbusters including *The Mermaid*, also saw a number of movies with major stars flop, such as the historical adventure *Xuan Zang* or the war film *Brothers*.<sup>200</sup> Others have argued that people may have misread the booming market to mean that any film makes money. However, audiences have a very different taste and are able to discern if a film is good or not.<sup>201</sup> Another reason for the slower growth might be a lack of Hollywood blockbusters, such as *Furious 7* in 2016.

## 2) Changing Demographics

The second factor beginning to constrain Hollywood growth in China is the country's changing demographics. Major cities in China, also known as first tier cities, have a large number of movie screens, prompting cinema construction to expand ever more into provincial regions of the country.

According to experts, this trend potentially causes a mismatch between audience demand and supply by cinema operators. This is because audiences in smaller Chinese cities or so-called third and fourth tier cities, would like to see more local content and may find Hollywood or

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<sup>198</sup> Ryan F. (2016) China exceeds quota on Hollywood Films amid box office slowdown [online] available at: <http://www.thebeijinger.com/blog/2016/10/24/china-exceeds-quota-hollywood-films-amid-box-office-slowdown> [last accessed May 31st 2017].

<sup>199</sup> Ibid.

<sup>200</sup> See supra note 173.

<sup>201</sup> According to Lawrence Wang, China regional manager for cinema technology provider Vista Group.

Western films in general, very strange. The success of these films in these cities may be a challenge.<sup>202</sup>

### 3) Expensive cinema tickets

About 70 percent of all movie tickets are sold online in China, compared to about 20 percent in the US. Throughout last year, China's start-up ticketing services — backed by heavy investment from the BAT - offered steep discounts as they fought to secure market share. Chinese distributors often kicked in additional subsidies to drop prices even lower, causing a ticket for a Chinese blockbuster to be as cheap as 30 RMB. This is a significant price drop as full-price tickets to 3D movies during summer and Chinese New Year can cost as much as 130 RMB in China.<sup>203</sup>

According to experts, as the market has stabilized for ticketing platforms there is less incentive to subsidise discounts; the investments are only coming from distributors.<sup>204</sup> As a result ticket prices have increased in the past 18 months. Since Chinese consumers are very price sensitive, people in smaller cities might stay away without any discounts

### 4) Diminishing returns from theatre construction

A research group, writing a report on the continued growth potential of the Chinese theatrical market analysed existing infrastructure, box office trends and current rates of urbanization and population mobility in an effort to pinpoint how much box office growth will continue to be driven by cinema construction. Results suggest that cinema construction is already becoming less bankable as a box office driver for the Chinese industry as a whole. Growth brought to the box office from 2015 to 2020 will only be about 26 percent. A nationwide survey found that 30 percent of people aged 13-59 in urban China — where screens are already abundant — only see one film in the theatre every year, compared to 76 percent in US.<sup>205</sup> However, as China continues its urbanization, as the number of shopping malls grows, and as the income of the

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<sup>202</sup> See supra note 173.

<sup>203</sup> Ibid.

<sup>204</sup> According to Jie Qiu, CEO of Beijing-based Leomus Pictures, per Brzeski, P. (2016) Lionsgate to make Chinese spinoff of “now you see me” [online] available at: <http://www.hollywoodreporter.com/news/lionsgate-make-chinese-spinoff-you-911469> [last accessed May 31st 2017].

<sup>205</sup> According to Fanink, a Beijing-based market research consulting firm specializing in the film industry, partnered with the School of Economics at Fudan University in Shanghai and interviewees.

Chinese population rises, China's film market will maintain a fast growth rate over the next ten years.

Experts suggest what keeps the growth going is the development of Chinese-language franchises and cross-platform IP, greater diversity of film genres, and longer theatrical release windows. Currently, it only takes about one month for a Chinese domestic movie to become available for online streaming; the same is true for about one third of Hollywood movies in China. A more mature market, and the development and deployment of better content was mentioned again.<sup>206</sup>

#### 5) Growth of the entertainment sector in an uncertain economy

Another factor contributing to the slowdown of China's box office numbers might be the cooling economy. China's official GDP growth slowed to 6.9 percent in 2015 — the lowest rate in 25 years. It is probably just a matter of time before China's broader economic picture has some impact on box office.

#### **“Fan Economics”**

The intense discussion shows that annual box office figures are gaining attention, not ancillaries. Marketers feel ancillaries are still not regarded as an important source of additional revenue in China whereas in other countries these represent a big share of the movie market.

Ancillaries include everything from merchandising through to TV and online distribution. An offshoot of this is product placement where the studios charge brands to feature their products in the movie. A major source of income for Hollywood blockbusters are ‘Consumer Products’. Studios are licensing the rights to use aspects of the movie's world (such as characters, items and places).

Currently, as reported in *Variety*, US box office numbers were 10.3 billion USD in 2014, and ancillaries were around 41.2 billion USD, making the entire market worth an estimated 51.5 billion USD. On the other hand, China's box office brought in 4.8 billion USD in 2014, with ancillaries worth around 1.2 billion USD. The whole market was worth an estimated six billion USD. It is still expected that the proportion of ancillaries in the Chinese market is likely to

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<sup>206</sup>See supra note 173.

expand, with digital ancillaries furthering this growth despite the country's slowing economy.<sup>207</sup> Digital ancillaries have a bright future in China because the nation's 684 million Internet users prefer to shop online. They use mobile phones to do this and Chinese innovations in online payment, such as Alipay or Wechat Pay, are making shopping easier and faster than ever before. As Jack Ma, the founder of Alibaba, states, "In other countries, e-commerce is a way to shop; in China it is a lifestyle."<sup>208</sup>

Although the digital ancillaries market in the US is still much bigger than in China, the Chinese market has shown a dramatic growth in revenue as it is driven by IP protection; domestic companies have now jumped on the bandwagon. However, China's current IP environment may affect the profitability of ancillary rights for physical merchandising in the short-term, since this is still a huge issue as far as counterfeit merchandise is concerned. Genuine physical merchandise is often swapped in the stores for counterfeit items, affecting profitability. However, this is less an IP problem and more of a problem about the enforcement of licensing terms. What's encouraging is a type of fan culture (also referred to as 'fan economy') developing among a growing number of cinema goers. These people want to buy real, not fake merchandise. This is why domestic companies have now started to sell real physical merchandise at the cinemas and selected shops.<sup>209</sup>

***"World of Warcraft (WoW)" – an interesting case study of China's fan economy and one that offers a glimpse into its potential***<sup>210</sup>

In July 2016, the China Daily published an article entitled: "'Internet super celebrity" paves way to culture of intellectual property creation'. This story gives an idea about the potential within the country's fan economy.

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<sup>207</sup> Alderson M. (2015) Digital Redemption for China's Movie Market [online] available at: <http://www.amcham-china.org/news/digital-redemption-for-chinas-movie-market> [last accessed December 20<sup>th</sup> 2016].

<sup>208</sup> KPMG (2014). *E-commerce in China: Driving a new consumer culture Report*; Clemes, M., Gan, C. and Zhang, J. (2014). An empirical analysis of online shopping adoption in Beijing, China. *Journal of Retailing and Consumer Services*, 21(3), pp.364-375.

<sup>209</sup> Mentioned by interviewees in the film sector.

<sup>210</sup> China Daily, Europe Edition (2016) Warcraft wows Chinese, seeds of fan economy [online] available at: [http://europe.chinadaily.com.cn/business/2016-07/25/content\\_26204949.htm](http://europe.chinadaily.com.cn/business/2016-07/25/content_26204949.htm) [last accessed December 20<sup>th</sup> 2016].

WoW turned out to be a blockbuster in China's cinemas despite failing in Europe and the US. The film that was adapted from the online game debuted at the beginning of June 2016 and within two weeks grossed about 209 million USD. According to statistics, on the release day 1.25 million Chinese watched the film; the average age was 28.7 years, and 61.7 percent of them were aged between 26 and 35 years.

The fanfare for this film began before its release in China. The third stop of a global tour of a Warcraft expo was held in Beijing's expensive shopping area Sanlitun on May 28, featuring official merchandise including toys, theme clothes and other products. Brands officially authorized by WoW extended beyond mobile phones and beverages to cover insurance and banking services.

A 27-year old WoW-fan interviewed by the newspaper had booked his movie premiere ticket a fortnight in advance. He described the day as a "festival" as other fans were armed with WoW toys, dressed like the game's characters or dressed in T-shirts with official logos. The man in question identified his friends through the symbol for "Horde" on their backpacks.<sup>211</sup> Chinese WoW fans perceive the game as competition where one has to use individual strength and personality to win respect. It creates a world with its own culture of responsibility and honour, providing a certain sense of belonging and loyalty.

The immense popularity of this game stretches back more than a decade. WoW quickly became the dominant online game in China after entering the country in 2005. The WoW-fan interviewed by China Daily perceives the game as an integral part of his youth as he had played it from a young age. WoW has spawned an entire community offline: players have formed friendships offline, some have fallen in love, married and started families together, while others have found work and careers through WoW connections.

Alibaba calls WoW a type of "internet super celebrity" and predicts it will become a new economic phenomenon. WoW-related topics have reportedly received 570 million clicks on Sina's Weibo page, and were among the top searches on Baidu. WoW fans actively follow microblogs that discuss the game, forming a huge online community. As stated by Dong Can, an Internet media analyst at Everbright Securities "[a]s a result, fans form their own groups so the

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<sup>211</sup> The game is based on a war between the two opposing camps: the Horde and the Alliance. Cinemas flew the blue Alliance flag and the red Horde banner in their halls and divided seating into blue and red sections.



circles of fans spending money offline for products"<sup>212</sup>. The Chinese fan economy is still in its early stages, but experts understand that it is a part of China's film value chain connected with IP. The creation of IP is understood to be a valuable asset required to upgrade the industry<sup>213</sup>.

## Conclusion

This report provides a snapshot of the current film industry in China, including on-site interviews with a diverse set of players and a study of existing literature. The objective of the research was to find out about the current status of copyright for film and audio-visual content in the era of advanced Internet technologies, and the use of the Internet to produce and distribute content. This is particularly interesting in a country like China, which has seen massive economic development over the past few decades, including the development of its cultural industries, particularly film. The unprecedented growth and maturation of the Internet has also massively changed the way films are produced and viewed.

The film industry is showing an impressive growth<sup>214</sup> with the revenue for 2016 running ahead of last year's but at a slower pace than before. However even with recent box office numbers growing relatively modestly,<sup>215</sup> China's film market is predicted to overtake the one in the US next year. Its industry continues to battle with copyright protection, quality content, regulation and commercialisation.

Thus, the decisive questions of this research are whether China's players have found a model of monetising next-generation online content as a larger number of paying users increases. This element is particularly interesting because up until now China has been known for all sorts of copyright issues in the entertainment industry rather than for adapting to the Western model of buying or licensing content. China's IP framework mirrors the Western IP system and its

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<sup>212</sup> China Features (2016) Warcraft wows Fans [online] available at: <http://www.icrosschina.com/sizing/2016/0627/25085.shtml> [last accessed February 26<sup>th</sup>, 2019].

<sup>213</sup> Liang, Y., (2016) available at: [https://www.researchgate.net/publication/315861710\\_Fan\\_economy\\_in\\_the\\_Chinese\\_media\\_and\\_entertainment\\_industry\\_How\\_feedback\\_from\\_super\\_fans\\_can\\_propel\\_creative\\_industries%27\\_revenue](https://www.researchgate.net/publication/315861710_Fan_economy_in_the_Chinese_media_and_entertainment_industry_How_feedback_from_super_fans_can_propel_creative_industries%27_revenue) Fan economy in the Chinese media and entertainment industry: How feedback from super fans can propel creative industries' revenue

<sup>214</sup> Frater, P. (2016) Weak September dents China's Box office charge [online] available at: <http://variety.com/2016/film/asia/weak-september-china-box-office-1201886747/> [last accessed October 26<sup>th</sup> 2016].

<sup>215</sup> Ibid.

enforcement has made improvements with a continuously amended copyright law. This development not only happened because more and more local talents are registering their IP domestically, but also because the country is becoming more experienced with home-grown content.

In a nutshell, the research finds that China has started to value copyright and develop new business models including licensing, even though it is still known for copyright infringements and freely available pirated content. Although the new copyright law has not been adopted, it seems clearly aimed at a stricter protection and enforcement of rights even as it balances various interests. In addition, other regulations and laws frame the film and content market. The NFL further promotes the film industry and tighter regulation of live-streaming. The legislation also advances copyright enforcement through the crackdown of online piracy, which has supported new business models that aim for paid subscriptions.

However, issues remain, such as the quality of films and content. The recent box office slowdown demonstrated the waning interest of moviegoers who complained about the quality of the films screened. That means good and interesting content is required. Partly to blame is the censorship and content guidelines. On the other hand, it is extremely difficult to screen genres beyond Hollywood blockbusters as the likes of documentaries or art house films are not known in the mainstream. The localisation of foreign content is one way to get audiences used to other cultures and ways of filmmaking. Another method is to agree on co-production treaties like the UK-China co-production treaty. The Treaty offers a unique opportunity for UK film makers to side-step the Chinese foreign film quota which has historically been monopolised by Hollywood blockbusters. The Treaty also contains a more detailed set of criteria than other UK co-production treaties. Qualifying productions under the new agreement will have access to finance and simpler regulations in both countries, while UK film producers will also be able to apply for the British Film Fund and Film Tax Relief.

Makers of foreign content may wish to consider making films or videos for online viewing as Chinese consumers are a different breed. They love to watch all sorts of content online on their smartphones. Their behaviour towards paid content has started to change. One reason might be that Internet companies like the BAT offer interesting subscription models and are adapting their products based on big data analytics to their customers tastes. Social media may have also helped to change free-riding behaviour. Since Chinese consumers are very price-sensitive, both licensing as well as subscription fees are substantially lower than in other countries.

As this research project only lasted 12 months, the results presented in this report only reflect a small perspective on China's film and online market. Future research could pick up on some of the current results, investigating and observing further developments in greater detail. One interesting topic to study in further detail would be the implementation of new business models and the increasing convergence of film and online content in online streaming. Another idea could be to include interviews in smaller Chinese cities, or of different age groups to understand the mind-set of Chinese consumers and viewing behaviour. It would also be worthwhile pursuing research in the rapidly expanding gaming industry as the project only covered film, music, and e-publishing. Gaming holds much research potential as it is enormously popular across China and faces issues connected to those raised in this paper, for example censorship or content piracy.



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